128-31

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1887.

No. ~~317~~ 56

THE WESTERN UNION TELEGRAPH COMPANY,
PLAINTIFF IN ERROR,

vs.

THE COMMONWEALTH OF PENNSYLVANIA.

IN ERROR TO THE SUPREME COURT OF THE STATE OF PENNSYLVANIA.

FILED SEPTEMBER 29, 1885.

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INDEX.

	Original.	Print.
Writ of error	1	1
Citation	4	1
Proof of service of citation	5	2
Return to writ of error	6	2
Transcript from Dauphin county court of common pleas	6	2
Appearance docket entries	6	2
Agreement to try without jury	7	3
Report of gross receipts	9	3
Account	10	4
Appeal	11	5
Deposition of A. R. Brewer	15	8
Defendant's points	19	11
Opinion	20	12
Defendant's exceptions	29	15
Order for judgment	36	17
Writ of error	37	18
Return to writ of error	39	18
Docket entries	40	19
Præcipe and affidavit for writ of error	42	20
Recognizance for writ of error	43	20

JUDD & DETWEILER, PRINTERS, WASHINGTON, OCTOBER 7, 1887.

	Original.	Print.
Assignment of errors	44	21
Opinion	52	23
Return to writ of error	52	24
Petition for writ of error	54	24
Allowance of writ of error	63	27
Bond	64	27
Clerk's certificate	67	28
Assignment of errors	68	29

1 UNITED STATES OF AMERICA, *ss:*

[Seal of the Supreme Court of the United States.]

The President of the United States of America to the honorable the judges of the supreme court of the State of Pennsylvania, Greeting:

Because in the record and proceedings as also in the rendition of the judgment of a plea which is in the said supreme court before you or some of you, being the highest court of law or equity of the said State in which a decision could be had in the said suit between The Western Union Telegraph Company, plaintiff in error, and The Commonwealth of Pennsylvania, defendant in error, wherein was drawn in question the validity of a treaty or statute of or an authority exercised under the United States, and the decision was against their validity, or wherein was drawn in question the validty of a statute of or an authority exercised under said State, on the ground of their being repugnant to the Constitution, treaties, or laws of the United States, and the decision was in favor of such their

2 validity, or wherein was drawn in question the construction of a clause of the Constitution or of a treaty or statute of or commission held under the United States, and the decision was against the title, right, privilege, or exemption specially set up or claimed under such clause of the said Constitution, treaty, statute, or commission, a manifest error hath happened, to the great damage of the said plaintiff in error, as by its complaint appears, we, being willing that error, if any hath been, should be duly corrected and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington on the second Monday of October next, in the said Supreme Court to be then and there held, that, the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error what of right and according to the laws and customs of the United States should be done.

3 Witness the Honorable Morrison R. Waite, Chief Justice of the said Supreme Court, the nineteenth day of September, in the year of our Lord one thousand eight hundred and eighty-five.

JAMES P. McKENNEY,
Clerk of the Supreme Court of the United States.

Allowed by—
JOSEPH B. BRADLEY,
Associate Justice of the Sup. Court U. S.
July 2d, 1885.

4 The United States of America to the Commonwealth of Pennsylvania, Greeting:

You are hereby cited and admonished to be and appear at a

Supreme Court of the United States to be holden at Washington on the second —day of October next, pursuant to a writ of error filed in the office of the prothonotary of the supreme court of Pennsylvania, for the middle district, wherein The Western Union Telegraph Company is plaintiff in error and you are defendant in error, to show cause, to show cause, if any there be, why the judgment rendered against the said plaintiff in error, as in the said writ of error mentioned, should not be corrected and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable Joseph P. Bradley, associate justice of the Supreme Court of the United States, this second day of July, in the year of our Lord one thousand eight hundred and eighty-five.

JOSEPH P. BRADLEY,
Associate Justice of the Supreme Court of the United States.

5 [Endorsed:] Western Union Telegraph Company *vs.* Commonwealth of Pennsylvania. Citation.

STATE OF PENNSYLVANIA, *ss:*

On this 25 day of September, in the year of our Lord one thousand eight hundred and eighty-five, personally appeared A. C. Stamm before me, the subscriber, prothonotary of the supreme court of Pennsylvania, for the middle district thereof, and makes oath that he delivered a true copy of the within citation to Robert Snodgrass, deputy attorney general of the Commonwealth of Pennsylvania.

A. C. STAMM.

Sworn and subscribed before me the day and year aforesaid.

WILLIAM PEARSON,
Prothonotary.

6 The answer of the justices of the supreme court of the State of Pennsylvania to the writ of error from the Supreme Court of the United States hereunto annexed as follows, to wit:

Among the records and proceedings enrolled in the court of common pleas in and for the county of Dauphin, in the Commonwealth of Pennsylvania, to No. 480, April term, 1885, is contained the following:

Copy of Appearance. Docket Entry.

COMMONWEALTH OF PENNSYLVANIA
v.
WESTERN UNION TELEGRAPH COMPANY.

Appeal from the settlement of the auditor general and State treasurer April 13, 1885.

Cassidy; Olmsted.

April 13, 1885.—Appeal and specification of objections filed.
May 12, 1885.—Pleading, testimony, and defendant's points filed.

Same day.—Finding and opinion of court filed, deciding that there is due the Commonwealth two thousand nine hundred thirty-seven $\frac{49}{100}$ dollars ($2,937.49) and costs.

7 May 16, 1885.—Defendant's exceptions filed. Same day—Exceptions overruled, and judgment entered on the finding of the court.

May 25, 1885.—Writ of error from the supreme court received and filed.

Certified.

[Seal of the Court of Common Pleas of Dauphin County.]

E. B. MITCHELL,
Prothonotary.

Agreement to Try Without Jury.

In Dauphin County Common Pleas. April Term, 1885.

COMMONWEALTH OF PENNSYLVANIA
v.
WESTERN UNION TELEGRAPH COMPANY. } 480.

HARRISBURG, PA., *April* 13, 1885.

It is hereby agreed that the above-entitled case shall be tried by the court, without the intervention of a jury, under the act of April 22, 1874.

ROBERT SNODGRASS,
Deputy Attorney General.
M. E. OLMSTED,
Attorney for Defendant.

8 [Endorsement:] 480. April term, 1885. Commonealth of Pennsylvania *v.* Western Union Telegraph Company. Agreement to try without jury. Filed April 13, 1885.

Claim for Tax on Gross Receipts.

In Common Pleas of Dauphin County. April Term, 1885.

COMMONWEALTH OF PENNSYLVANIA
vs.
WESTERN UNION TELEGRAPH COMPANY. } 480.

Report, account, appeal, deposition, and defendant's points.

M. E. Olmstead, Willard Brown, attorneys for defendant.

9 *Report of Gross Receipts.*

To the auditor general of Pennsylvania:

In accordance with the requirements of the seventh section of an act entitled "An act to provide revenue by taxation," approved June 7, 1879, as treasurer of the Western Union Telegraph Company, I make the following report of the gross receipts of said company for the six months ending June 30, 1884.

R. H. ROCHESTER, *Treasurer.*

OFFICE OF THE WESTERN UNION TELEGRAPH COMPANY,
195 BROADWAY, NEW YORK, *November* 7, 1884.

Gross receipts derived from all sources during the above period, as follows:

For telegraph business within the State of Pennsylvania	$170,297 87
Total gross receipts	$170,297 87

STATE OF NEW YORK, }
City and County of New York, } *ss:*

On this 8th day of November, A. D. 1884, personally appeared before me, a notary public in and for the State and county aforesaid, R. H. Rochester, treasurer of the Western Union Telegraph Company, who, being duly sworn according to law, did depose and say that the foregoing report is true and correct, and that the company has accounted for and returns herewith gross receipts.

R. A. ROCHESTER, *Treasurer.*

Sworn and subscribed before me the day and year aforesaid.

WILLIAM ARNOUX,
Notary Public, New York and Kings County.

10 *Account.*

Western Union Telegraph Company in account with the Commonwealth of Pennsylvania, Dr.

For tax upon gross receipts, per act of June 7, 1879, for six months ending June 30, 1884:

The Western Union Telegraph Company having reported only a portion of its gross receipts for the above-named period, and having refused to report its gross receipts derived from all sources during said period, the auditor general and state treasurer, in pursuance of section 14 of the act of March 30, 1871, do hereby estimate the gross receipts of said Western Union Telegraph Company for above-named period to be		$10,330,719 12
Tax rate of eight-tenths of one per cent.		82,645 75
Estimated pole mileage, $\frac{8362}{144025}$; wire mileage, $\frac{35635}{40443}$. Proportion of tax due State of Pennsylvania, computed upon the combined pole and wire mileage of the company, as above estimated (a mile of poles and one wire being equal to six additional wires), as found by the court of common pleas of Dauphin county in the case of The Commonwealth *vs.* Western Union Telegraph Company, at No. 99, August term, 1883, $\frac{27,238,071}{444,043.621.515}$ of $82,645.75		$5,067 89
Due the Commonwealth		$5,067 89

AUDITOR GENERAL'S DEPARTMENT,
HARRISBURG, *November* 20, 1884.

Settled and entered.

JEROME B. NILES,
Auditor General.

TREASURY DEPARTMENT, PA.,
HARRISBURG, *November* 20, 1884.

Approved.

W. LIVSEY,
State Treasurer.

AUDITOR GENERAL'S DEPARTMENT,
HARRISBURG, *November* 20, 1884.

I hereby certify that the above is a true copy of the original remaining on file in this department.

Witness my hand and seal of office the day and year aforesaid.

THOMAS McCLMANT,
[SEAL.] For J. B. NILES,
Auditor General.

11 *Appeal.*

In the matter of the account for estimated tax upon gross receipts for the six months ending June 30, 1884, settled against the Western Union Telegraph Company by the auditor general and approved by the state treasurer of Pennsylvania upon the 20th day of November, 1884.

The said Western Union Telegraph Company hereby appeals from said settlement to the court of common pleas of Dauphin county, and, together with a copy of the account, files the following specifications of objections thereto, agreeably to the provisions of the act of Assembly in such case made and provided:

1. The Western Union Telegraph Company is a corporation and citizen of the State of New York, having its principal office and place of business in the city of New York, in said State. It owns or leases and operates telegraph lines in most or all of the States and Territories of the United States, and in Canada. The total receipts of the company from telegraph business during the six months ending June 30, 1884, were not so great as the sum estimated in the settlement hereby appealed from, viz., $10,330,719.12. Nor was the proportion of its poles and wires nor of its gross receipts derived from telegraph business within the State of Pennsylvania so great as estimated in said settlement, viz., $\frac{27,230,237,071}{444,043,621,515}$; and, therefore, in no event and upon no construction of law is there due the State of Pennsylvania as taxes so great a sum as claimed in said settlement, viz., $5,067,89.

2. The Western Union Telegraph Company is a corporation and citizen of the State of New York, having its principal office and place of business and general treasury in the city of New York in

said State; and at the time when the tax claimed is alleged
12 to have accrued or become due and also at the time of the settlement of the account by the auditor general the receipts upon which tax is charged were the personal property of said company in the city and State of New York, mingled with its other receipts and personal property in said State, and were not subject to taxation by the State of Pennsylvania.

3. The taxation by the State of Pennsylvania of property owned in New York by a corporation of the State of New York is in violation of a necessary implication of the Constitution of the United States that each State shall have jurisdiction only over property within its territorial limits.

4. The total receipts of the Western Union Telegraph Company from business done over lines wholly or in part within the State of Pennsylvania during the six months ending June 30, 1884, were as follows:

(*a*) Receipts from messages sent from points in Pennsylvania to points in Pennsylvania	$170,297 87
(*b*) Receipts from messages sent from points in Pennsylvania to points in other States, $170,000; estimating one-third of distance between points to be in Pennsylvania, gives earnings of Pennsylvania portion of the line	56,666 67
(*c*) Receipts from messages sent from points in other States to points in Pennsylvania, $170,000; estimating proportion over line in Pennsylvania, as above	56,666 66
(*d*) Receipts from messages sent from points outside of Pennsylvania to points outside of Pennsylvania, but over lines partly within the State of Pennsylvania, not over $650,000; average proportion of line in Pennsylvania over which said messages passed, not over one-twelfth, which proportion applied to receipts from this source gives	54,166 67
Total	$337,797 87

the greatest amount, which, under any construction of law, is
13 taxable in Pennsylvania, and upon which the tax, at eight mills, would be $2,702.38, instead of $5,067.89, as charged in the account hereby appealed from, which said tax is charged without warrant or authority of law upon a certain ratio of all the company's receipts, including not only receipts from telegraph business in Pennsylvania, but also upon receipts derived from rental of its real estate in New York, from dividends and interest upon stocks and bonds in other corporations owned by said Western Union Telegraph Company, from cable dispatches sent between this country and France and England, &c., and from messages sent from point to point in Canada, and between Canada and the United States, and

between points in the United States without passing through or into any portion of the State of Pennsylvania, or over any line of telegraph within said State.

5. The total receipts of the Western Union Telegraph Company from business wholly within the State of Pennsylvania—that is to say, from messages sent between points both of which are within said State during the six months ending June 30, 1884, were $170,297.87, upon which the tax, at eight-tenths of one per centum, would amount to $1,362.38, and no more, and all tax charged in the settlement hereby appealed from in excess of said sum is a tax upon receipts derived from messages sent from points in Pennsylvania to points in other States, or from points in other States to points in Pennsylvania, or between points neither of which is within the State of Pennsylvania, but over lines partly within said State. The taxation of messages thus sent from State to State, receipts derived from messages so sent, is an interference with commerce between the States and in violation of clause four of section eight of article I of the Constitution of the United States, which declares that "Congress shall have power to regulate commerce with foreign nations and among the several States and with the Indian tribes;" and therefore the act of June 7, 1879, under which said tax is claimed, if it be found to warrant the imposition of said tax, is unconstitutional and void.

6. Of the moneys received by the Western Union Telegraph Company for telegraph business during the six months ending June 30, 1884, only $340,297.87 were actually received, or
14 were at any time physically within the State of Pennsylvania, viz., $170,297.87 derived from business wholly within the State of Pennsylvania, and $170.000 received in Pennsylvania for messages sent from points in to points without said State.

The moneys received from messages sent from points outside of Pennsylvania to points in said State----	$170,000 00
And the moneys received for messages sent from points outside of Pennsylvania to points outside of Pennsylvania over lines partly within the State of Pennsylvania----	650,000 00
	$820,000 00

Were not received within the State of Pennsylvania, and was never physically within the State of Pennsylvania. The attempt to tax moneys received in other States and physically within other States, because the messages for the sending of which said money was received passed into or through the State of Pennsylvania is in violation of the Constitution of the United States, and any act of Assembly authorizing such taxation it unconstitutional and void, because in violation of clause four of section eight of article one of the Constitution of the United States, which reserves to Congress the power to regulate commerce with foreign nations and among the several States.

7. The act of June 7, 1879, or so much thereof as authorizes the

imposition of the tax claimed in the settlement hereby appealed from, is void because in conflict with the act of Congress passed July 24, 1866 (14 Statutes at Large), re-enacted Revised Statutes of the United States, page 1024, section 5263, *et seq.*, the said section 5263 reading as follows: "Any telegraph company now organized or which may hereafter be organized under the laws of any State shall have a right to construct, maintain, or operate lines of telegraph through and over any portion of the public domain of the United States, over or along any post road of the United States which has been or may be hereafter declared such by law, and over, under, or across the navigable streams of water of the United States, but such lines of telegraph shall be so constructed and maintained as not to obstruct the navigation of such streams or waters or interfere with the ordinary traffic on such military or post roads."

THE WESTERN UNION TELEGRAPH COMPANY,
By its attorneys, M. E. OLMSTED,
WILLARD BROWN.

15 *Deposition of A. R. Brewer, Secretary of Western Union Telegraph Company.*

STATE OF NEW YORK, }
City of New York, } *ss:*

In Court of Common Pleas of Dauphin County. April Term, 1885.

COMMONWEALTH OF PENNSYLVANIA }
vs. } 480.
WESTERN UNION TELEGRAPH CO. }

Before me, the subscriber, a commissioner of deeds for Pennsylvania in New York, personally appeared Abijah R. Brewer, who, being by me duly sworn according to law, did depose and say that he is the secretary of the Western Union Telegraph Company.

That the said Western Union Telegraph Company is a corporation created by and existing under the laws of the State of New York, having its principal office and place of business in the city of New York, in said State.

That said corporation owns or leases and operates telegraph lines in most or all of the States and Territories of the United States and in Canada.

That the report made by the officers of said company to the secretary of internal affairs of Pennsylvania for the year 1883 (which said report, it is understood, was used as the basis upon which the auditor general estimated the amount of gross receipts of the company for the six months ending June 30, 1884), includes not only the receipts of the company from its own telegraph and oceanic cable business, but also its entire receipts, including rentals from real estate and dividends and interest upon stocks and bonds of other companies held by the Western Union Telegraph Company, which said real estate, stocks, and bonds constitute a large proportion, say about one-fifth, of all the property of the company.

16 That the receipts from telegraph business of the company were not so large proportionately in the first six months of 1884 as in the year 1883, and consequently the report made to the secretary of internal affairs for the year 1883 as aforesaid did not furnish any reliable or accurate basis for the six months ending June 30, 1884.

That the account settled by the auditor general not only taxes the ratio of a larger sum than the company actually received from all sources during that period, but also taxes a certain ratio of all the company's receipts, including not only receipts from telegraph business in Pennsylvania, but also receipts derived from rental of its real estate in New York, from dividends and interest upon stocks and bonds of other corporations owned by the Western Union Telegraph Company as aforesaid, and from cable messages to and from England, and from messages from point to point in Canada and the United States, and between points in the United States without passing through or into any portion of the State of Pennsylvania or over any line of telegraph within said State.

That the receipts below mentioned in paragraph "A" are accurate, as appears from the books of the company; that it is impossible for him to state with entire accuracy the receipts of said company from telegraph business done partly within and partly without the State of Pennsylvania during the six months ending June 30, 1884, but that the amounts received, as he verily believes, do not exceed the sums mentioned below in paragraphs " B," " C," and " D," viz:

A. Receipts from messages sent from point to point in Pennsylvania		$170,297 87
B. Receipts at offices in Pennsylvania from messages sent from points in Pennsylvania to points in other States	$170,000*	
17 One-third of distance between said points estimated to be in Pennsylvania gives earnings of Pennsylvania portion of line		$55,666 67
C. Receipts at offices not in Pennsylvania from messages sent from points in other States to points in Pennsylvania	$170,000	
Distance in Pennsylvania, estimated one-third, gives earnings of Pennsylvania portion of line		56,666 66
D. Receipts from messages sent from points outside of Pennsylvania to points outside of Pennsylvania, but over lines partly within the State of Pennsylvania	650,000	

* As each office accounts for amounts actually received by it, these figures include receipts from messages sent "collect" from other States into Pennsylvania, and item "C" includes messages sent "collect" from Pennsylvania into other States. On the average, messages thus sent into Pennsylvania balance those sent out, and the result is the same as if all messages were paid.

Average proportion of line in Pennsylvania over which messages passed, estimated at one-twelfth, gives proportion of earnings from Pennsylvania portion of line	54,166 67
Total earnings of Pennsylvania proportion of lines	$337,797 87

That the telegraph business of the company in Pennsylvania and elsewhere is transacted through local agents or superintendents who report to the general office, make settlements, and remit balances monthly into the general treasury at its said general office in the city and State of New York.

That of the moneys received by the Western Union Telegraph Company for telegraph business during the six months ending June 30, 1884, no more than $340,297.87 were actually received or were at any time physically within the State of Pennsylvania, viz., $170,297.87 derived from business wholly within the State of Pennsylvania, and $170,000 received in Pennsylvania for messages sent from points within to points without said State (of which latter item not more than one-third was received as the earnings of that portion of the line in Pennsylvania, as above stated).

18 That the moneys received from messages sent from points outside of Pennsylvania to points in said State $170,000 00

And the moneys received from messages sent from points outside of Pennsylvania to points outside of Pennsylvania over lines partly within the State of Pennsylvania 650,000 00

Total $820,000 00

were not received in the State of Pennsylvania and were never physically within the said State.

That the Western Union Telegraph Company did formally accept the provisions of the act of Congress of July 24, 1866 (14 Stat., 221, Rev. Stat., sect. 5263, *et seq.*), by resolution adopted by its board of directors June 5, 1867, and duly filed with the Postmaster General, said resolution reading as follows:

"Resolved, That this company does hereby accept the provisions of the act of Congress entitled 'An act to aid in the construction of telegraph lines and to secure to the Government the use of the same for postal, military, and other purposes,' approved July 24, 1866, with all the powers, privileges, restrictions, and obligations conferred and required thereby, and that the secretary be, and he is hereby, authorized and directed to file this resolution with the Postmaster General of the United States, duly attested by the signature of the acting president of the company and the seal of the corporation, in compliance with the fourth section of said act of Congress."

A. R. BREWER,
Secretary Western Union Telegraph Company.

Sworn and subscribed before me the 14th day of April, A. D. 1885.
In witness whereof I have hereunto set my hand and affixed my official seal the day and year in this certificate last above written.

JOSEPH B. BRAMAN,
Commissioner for the State of Pennsylvania in and for the State of New York, Resident in said City of New York.

Office, Equitable building, 120 Broadway, New York city.

19 *Defendant's Points.*

In Court of Common Pleas of Dauphin County. April Term, 1885.

COMMONWEALTH OF PENNSYLVANIA
vs.
WESTERN UNION TELEGRAPH CO. } No. 480.

The court is asked to find as conclusions of law—

1. That the taxation by the State of Pennsylvania of receipts *are* the property, owned in New York, of a corporation of the State of New York is in violation of a necessary implication of the Constitution of the United States that each State shall have jurisdiction only over property within its territorial limits.

2. That the taxation by the State of Pennsylvania of the whole or any portion of $170,000, the receipts of the Western Union Telegraph Company upon messages sent from points in Pennsylvania to points in other States, although payment for the said messages was actually received in Pennsylvania, is in violation of clause four of section eight of article I of the Constitution of the United States, which declares that "Congress shall have power to regulate commerce with foreign nations and among the several States and with the Indian tribes."

3. That the taxation by the State of Pennsylvania of the whole or any portion of $170,000, the receipts of the Western Union Telegraph Company for messages sent from points in other States to points in Pennsylvania, said receipts never having been physically within the State of Pennsylvania, is in violation of clause four of section eight of article I of the Constitution of the United States, which reserves to Congress the power to regulate commerce with foreign nations and among the several States.

4. That the taxation by the State of Pennsylvania of the whole or any portion of $650,000, the receipts of the Western
20 Union Telegraph Company for messages sent from points outside of Pennsylvania to points outside of Pennsylvania, but over lines partly within said State, and said receipts never having been physically within the State of Pennsylvania, is in violation of clause four of section eight of article I of the Constitution of the United States, which reserves to Congress the power to regulate commerce with foreign nations and among the several States.

5. That the act of June 7, 1879, if it warrants the imposition of a tax upon the receipts of the Western Union Telegraph Company for messages sent from Pennsylvania into other States, or from other

States into Pennsylvania, or from other States to other States, passing through the State of Pennsylvania, or from messages sent by or on behalf of the United States Government, or by an officer thereof, is void, because in conflict with the act of Congress passed July 24, 1866 (14 Statutes at Large, p. 221, Revised Statutes, p. 1024, section 5263, *et seq.*), said section having been duly accepted and adopted by the Western Union Telegraph Company.

6. That The Western Union Telegraph Company, defendant, is in no event liable for a larger sum than $1,362.38, being the tax upon $170,297.87, receipts derived from messages sent between points both of which are within the State of Pennsylvania.

M. E. OLMSTED,
Attorney for Western Union Telegraph Company, Defendant.

(Endorsement:) 480. April term, 1885. Commonwealth *vs.* Western Union Telegraph Company. Pleadings, testimony, and defendant's points. Filed May 12, 1885.

Opinion of Court of Common Pleas.

In Dauphin County Common Pleas. April Term, 1885.

COMMONWEALTH OF PENNSYLVANIA
v.
WESTERN UNION TELEGRAPH COMPANY. } 480.

Appeal from settlement of an account for tax on gross receipts.

By the COURT:

This case was tried by the court without a jury. We find the facts as follows:

21 1. Defendant is a corporation of the State of New York and has its principal office in the city of New York, in said State; it is doing business in the State of Pennsylvania, and owns and operates telegraph lines extending into and through this State and into and through most of the other States of the Union; it also operates several leased lines extending into and through this and other States, and it has numerous offices in this as well as in the other States.

2. Defendant received at offices within this State, during the six months covered by this settlement appealed from, for messages sent from point to point within the State, the sum of $170,297.87.

3. It also received at offices within the State, during the same period, for messages sent from points within the State to points in other States, the sum of $170,000.00.

4. It also received at offices in other States, during the same
22 period, for messages sent from points in other States to points within this State, the sum of $170,000.00.

5. It also received at offices in other States, during the same period, for messages sent from points in other States to points in other States over lines of wire which are partly within this State, the sum of $650,000.00.

6. The telegraph business of defendant in this State and elsewhere is transacted through local agents or superintendents, who report to the general office, make settlements, and remit balances monthly into the general treasury of defendant, at its general office, in the city and State of New York.

7. No more than $340,297.87 of the sums received during the six months covered by the settlement appealed from were actually received or were at any time after they were received physically within this State, viz., the $170,297.87 received for messages sent from point to point within the State, and the $170,000.00 received
23 for messages sent from points within to points without the State. All the other amounts above specified were received in other States and were never, after they were received, physically within this State.

8. Defendant, by a resolution of its board of directors, dated June 5, 1867, formally accepted the provisions of the act of Congress of July 24, 1866, entitled "An act to aid in the construction of telegraph lines and to secure to the Government the use of the same for postal and military purposes."

9. For the purposes of this case we find that the average proportion of line in this State over which the messages specified in paragraphs 3 and 4 above were sent was one-third, and that over which the messages specified in paragraph 5 were sent was one-twelfth. Defendant contends that the tax sought to be imposed upon it in this proceeding is invalid, for the following reasons, viz:

First. Because it is an attempt to tax property owned in
24 New York by a New York corporation, "in violation of a necessary implication of the Constitution of the United States that each State shall have jurisdiction only over property within its territorial limits."

In considering this objection we must keep in view the facts of the case, which show that the "property" taxed is the money which accrued to defendant as gross receipts from business transacted by it within the State of Pennsylvania. We do not know of any provision or implication of the Constitution of the United States which prohibits the taxation of such receipts; there certainly is no provision or "implication that each State shall have jurisdiction only over property within its territorial limits." It may have jurisdiction over the property and not over the person, or over the person and not over the property; the latter as well as the former may give jurisdiction to tax receipts such as we are concerned with in this case.
25 And notwithstanding the legal fiction that a corporation "must dwell in the place of its incorporation, and cannot migrate to another sovereignty," we hold that when a corporation does business in a State other than the one which created it, it is then present so as to subject itself to the jurisdiction of the State for some purposes, among which is that of taxation. The principals which lead to this conclusion are clearly stated in St. Clair *v.* Cox, 106 U. S., 350, where it is said, at page 355: "All that there is in the legal residence of a corporation in the State of its creation consists in the fact that by its laws the corporators are associated together

and allowed to exercise as a body certain functions, with a right of succession in its members. Its officers and agents constitute all that is visible of its existence, and they may be authorized to act
26 for it without as well as within the State. There would seem, therefore, to be no sound reason why, to the extent of their agency, they should not be equally deemed to represent it in the States for which they are respectively appointed when it is called to legal responsibility for their transactions."

Second. Defendant contends that the tax is invalid because it is a regulation of commerce between the several States, which is forbidden by clause four of section eight of the Constitution of the United States.

The Supreme Court of the United States has decided, in Reading Railroad Company *v.* Pennsylvania, 15 Wall., 284, that a tax on gross receipts accruing from the transportation of freight between the States is not a regulation of commerce. This was followed in Philadelphia and Southern Mail Steamship Co. *v.* Commonwealth, 104 Penna. St., 109. We are unable to distinguish this case from those, and we are bound by them until, if ever, they are
27 overruled or reversed. It certainly cannot be any more a regulation of commerce, as contended by defendant, to tax gross receipts which have accrued from business done within the State, but which have not been physically within the State, than it would be if such receipts had been physically here. If their physical absence from the State would render the tax invalid, it must be for a reason other than that it is a regulation of commerce.

Third. Defendant contends that the tax is invalid because it is in conflict with the act of Congress approved July 24, 1866, which was accepted by defendant.

No fact has been shown or reason given why this is so and we know of none.

We decline to find all or any of the conclusions of law which we are requested to find by defendant, with the same effect as if each were referred to by number and separately declined.

Instead thereof we find the following:

28 1. That defendant is liable for the tax in question upon the whole sum of $170,297.87, gross receipt- for messages sent from point to point within the State.

2. That defendant is liable for said tax upon one-third of $170,000.00, gross receipts from messages sent from points within the State to points in other States.

3. The defendant is liable for said tax upon one-third of $170,000.00, gross receipts for messages sent from points in other States to points within this State.

4. That defendant is liable for said tax upon one-twelfth of $650,000.00, gross receipts for messages — from points in other States to points in other States, which passed over lines partly within this State.

5. There is due from defendant to the Commonwealth in this case as follows:

Receipts for messages within the State, $170,297.87; tax	$1,362	38
Receipts for messages sent out of the State, $170,000; $\frac{1}{3}$, $56,666.67; tax	453	34
29 Receipts for messages sent into the State, $170,000; $\frac{1}{3}$, $56,666.67; tax	453	34
Receipts for messages sent through the State, $650,000; $\frac{1}{12}$, $54,166.66; tax	433	33
Interest from Jan. 20, 1885, to May 12, 1885, @ 12 % per annum	99	99
Attorney general's commission, 5 %	135	11
	$2,937	49

For which sum judgment is directed to be entered against defendant, if exceptions be not filed within the time limited by law.

J. W. SIMONTON, *P. J.*

(Endorsement:) 480. April term, 1885. Commonwealth *v.* Western Union Telegraph Company. Opinion. Filed May 12, 1885.

Defendant's Exceptions.

In Dauphin County Common Pleas. April T., 1885.

COMMONWEALTH OF PENNSYLVANIA
v.
WESTERN UNION TELEGRAPH COMPANY. } 480.

30 This case having been tried by the court, without the intervention of a jury, under the act of April 22, 1874, defendant filed the following exceptions to the finding of the court, agreeably to the provisions of the said act:

1. The court erred in declining to find as requested in defendant's first point, which was as follows:

"1. That the taxation by the State of Pennsylvania of receipts which are the property, owned in New York, of a corporation of the State of New York, is in violation of a necessary implication of the Constitution of the United States that each State shall have jurisdiction only over property within its territorial limits."

2. The court erred in declining to find as requested in defendant's second point, which was as follows:

"2. That the taxation by the State of Pennsylvania of the whole or any portion of $170,000, the receipts of the Western Union Telegraph Company upon messages sent from points in Pennsyl-
31 vania to points in other States, although payment for the said messages was actually received by Pennsylvania, is in violation of clause four of section eight of article I of the Constitution of the United States, which declares that Congress shall have power to regulate commerce with foreign nations and among the several States and with the Indian tribes."

3. The court erred in declining to find as requested in defendant's third point, which was as follows:

"3. That the taxation by the State of Pennsylvania of the whole or any portion of $170,000, the receipts of the Western Union Telegraph Company for messages sent from points in other States to points in Pennsylvania, said receipts never having been physically within the State of Pennsylvania, is in violation of clause four of section eight of article I of the Constitution of the United States, which reserves to Congress the power to regulate commerce
32 with foreign nations and among the several States."

4. The court erred in declining to find as requested in defendant's fourth point, which was as follows:

"4. That the taxation by the State of Pennsylvania of the whole or any portion of $650,000, the receipts of the Western Union Telegraph Company for messages sent from points outside of Pennsylvania to points outside of Pennsylvania, but over lines partly within said State, and said receipts never having been physically within the State of Pennsylvania, is in violation of clause four of section eight of article I of the Constitution of the United States, which reserves to Congress the power to regulate commerce with foreign nations and among the several States."

5. The court erred in declining to find as requested in defendant's fifth point, which was as follows:

"5. That the act of June 7, 1879, if it warrants the imposition of a tax upon the receipts of the Western Union Telegraph
33 Company for messages sent from Pennsylvania into other States or from other States into Pennsylvania, or from other States to other States, passing through the State of Pennsylvania, or from messages sent by or on behalf of the United States Government or by an officer thereof, is void, because in conflict with the act of Congress passed July 24, 1866 (14 Statutes at Large, page 221, Revised Statutes, page 1024, section 5263, *et seq.*), said section having been duly accepted and adopted by the Western Union Telegraph Company."

6. The court erred in declining to find as requested in defendant's sixth point, which was as follows:

"6. That the Western Union Telegraph Company, defendant, is in no event liable for a larger sum than $1,362.38, being the tax upon $170,297.87, receipts derived from messages sent between points both of which are within the State of Pennsylvania."

7. The court erred in its first conclusion of law as follows:

34 "1. That the defendant is liable for the tax in question upon the whole sum of $170,297.87, gross receipts from messages sent from point to point within the State."

8. The court erred in its second conclusion of law as follows:

"2. That defendant is liable for said tax upon one-third of $170,000, gross receipts from messages sent from points within the State to points in other States."

9. The court erred in its third conclusion of law as follows:

"3. The defendant is liable for said tax upon one-third of $170,000, gross receipts from messages sent from points in other States to points within this State."

10. The court erred in its fourth conclusion of law as follows:

"4. That defendant is liable for said tax upon one-twelfth of $650,000.00, gross receipts for messages from points in other States to points in other States which passed over lines partly within this State."

35 11. The court erred in its fifth conclusion of law as follows:

"5. There is due from defendant to Commonwealth in this case as follows:

Receipts for messages within the State, $170,297.87; tax,		$1,362 38
Receipts for messages sent out of the State, $170,000; ⅓, $56,666.67; tax		453 34
Receipts for messages sent into the State, $170,000; ⅓, $56,666.67; tax		453 34
Receipts for messages sent through the State, $650,000; 1/12, $54,166.66; tax		433 33
Interest from Jan'y 20, 1885, to May 12, 1885, @ 12 % per annum		99 99
Attorney general's commission, 5%		135 11
		$2,937 49

For which sum judgment is directed to be entered against defendant, if exceptions be not filed within the time limited by law."

12. The court erred in not directing judgment to be entered in favor of defendant.

Harrisburg, Pa., May 15, 1885.

M. E. OLMSTED,
Attorney for Defendant.

(Endorsement:) 480. April term, 1885.

Defendant's Exceptions. Filed May 16, 1885.

36 COMMONWEALTH OF PENNSYLVANIA
v.
WESTERN UNION TELEGRAPH COMPANY.

Order of court overruling exceptions.

MAY 16, 1885.

The foregoing exceptions are severally overruled and judgment is ordered to be entered for the amount found by the court to be due.

By the court.

J. W. SIMONTON, *P. J.*

Writ of Error from the Supreme Court of Pennsylvania.

37 MIDDLE DISTRICT OF PENNSYLVANIA, *sct:*

[Seal of Supreme Court of Penna., Middle District.]

The Commonwealth of Pennsylvania to the justices of the court of common pleas for the county of Dauphin, Greeting:

Because in the record and process and in rendering the judgment in a certain plaint which was in our said court, before the judges of the same court, by our writ, between the Western Union Telegraph Company, plaintiff in error, and the Commonwealth of Pennsylvania, defendant in error, as it is said, manifest error hath intervened, to the great damage of the said plaintiff in error, as by complaint of the same plaintiff in error we have received information, we, willing that if any error be therein it should be corrected and that speedy justice be done to the parties in this part, do command you that, if judgment, as it is said, be rendered in the said plea, then the record and process and all things touching the same, under your seals, distinctly and openly, you have before the justices of our supreme court of Pennsylvania, to be held at Harrisburg, in and for the middle district of said Commonwealth, on the 21st Monday foll. 1 Mon. of Jan., 1885, next, being the 1st Monday of the term, and this writ, that, the record and process aforesaid being inspected, we may further cause to be done what of right and according to our laws and customs ought.

Witness the Honorable Ulysses Mercer, doctor of laws, chief justice of our supreme court, at Harrisburg, the 25 day of May, in the year of our Lord one thousand eight hundred and eighty-five, and of the Commonwealth the one hundred and ninth.

WILLIAM PEARSON,
Prothonotary.

38 Endorsement: No. 23. May term, 1885. Supreme court, middle district. Western Union Telegraph Co., plaintiff in error, *v.* Commonwealth of Pennsylvania, defendant in error. Writ of error to the court of common pleas for the county of Dauphin (No. 480, April term, 1885). Returnable 21 Monday following 1 Monday of January, 1885. Rule on defendant in error to appear and plead on the return day of the writ. N. B.—10 days' notice to the parties or counsel below is necessary to compel an appearance. Filed in supreme court May 30, 1885. Filed in Dauphin common pleas May 25, 1885.

I certify that recognizance for costs in $100.00, with A. C. Stamm as bail, has been filed in the supreme court.

WILLIAM PEARSON,
Prothonotary.

39 *Acceptance of Service of Writ.*

May 25, 1885.—Service of within writ accepted.

ROBERT SNODGRASS,
Deputy Attorney General.

Return to Writ.

The record and process and all things touching the same, so full and entire as before us they remain, to the honorable the judges of the supreme court of the Commonwealth of Pennsylvania, sitting in and for the middle district, we certify and send as within we are commanded.

J. W. SIMONTON, *P. J.* [L. S.]

In the Supreme Court of Pennsylvania, in and for the Middle District of said Court. April Term, 1885.

At a supreme court of the State of Pennsylvania, sitting in and for the middle district of said court, at the city of Harrisburg, Pennsylvania, on the 21st Monday following the 1st Monday of
40 January, A. D. 1885—present, the Honorable Ulysses Mercer, chief justice; and Isaac G. Gordon, Edward M. Paxon, John Trunkey, James P. Sterrett, Henry Green, and Silas M. Clark, justices; and William Pearson, prothonotary of the said supreme court of Pennsylvania, in and for the said middle district, to May term, 1885, No. 23—it is contained as follows, to wit:

Writ of Error to the Court of Common Pleas of Dauphin County.

WESTERN UNION TELEGRAPH COMPANY, Defendant Below,
v.
COMMONWEALTH OF PENNSYLVANIA, Plaintiff Below. } No. 480.

Olmsted.

Docket entry:

1885, May 25.—*Præc.*, aff., & recog. filed, *es die*, exit writ of error, r-t-ble 21 Monday following 1 Monday of January, 1885.

1885, May 30.—Record returned and filed.

" June 1.—Assignments of error filed.

" 4.—Argued.

" 4.—Judgment affirmed, *per curiam*.

41 1885, Sept. 24—Writ of error from the Supreme Court of the United States received and filed.

1885, July 3.—Petition for allocatur of writ from the Supreme Court of the United States. Allocatur of said writ by Hon. Joseph P. Bradley, justice of said court, and writ of error bond in the sum of $5,000 received and filed.

1885, Sept. 25.—Citation from said Hon. Joseph P. Bradley and affidavit of service thereof on the deputy attorney general of the Commonwealth of Pennsylvania received and filed.

Certified from the record.

[Seal of the Supreme Court of Pennsylvania, Middle District, 1776.]

WILLIAM PEARSON,
Prothonotary.

Præcipe, Affidavit, and Recognizance for Writ of Error.

42 In the Supreme Court of Pennsylvania for the Middle District.

WESTERN UNION TELEGRAPH COMPANY, Defendant Below, Plaintiff in Error,

vs.

COMMONWEALTH OF PENNSYLVANIA, Plaintiff Below, Defendant in Error.

Issue writ of error to the court of common pleas of Dauphin county to remove the record and proceeding in a certain action of debt depending therein to No. 480, of April term, 1885, returnable to May term, 1885.

M. E. OLMSTED,
Attorney for Plaintiff in Error.

To William Pearson, proth'y supreme court of Pa., middle district.

DAUPHIN COUNTY, *ss:*

M. E. Olmsted, attorney for the above-named plaintiff in error, being duly sworn according to law, deposes and says that the writ of error in this case is not intended for delay.

M. E. OLMSTED.

Sworn & subscribed before me this 25 day of May, 1885.
WILLIAM PEARSON,
Prothonotary.

43 *Surwrit of Error to the Court of Common Pleas for the County of Dauphin of April Term*, 1885.

In the Supreme Court of Penn'a for the Middle District.

DAUPHIN COUNTY, *ss:*

WASTERN UNION TELEGRAPH COMPANY, Plaintiff in Error,
vs.
COMMONWEALTH OF PENNSYLVANIA, Defendant in Error. } No. 480.

We, M. E. Olmsted, attorney for Western Union Telegraph Company, and A. C. Stamm, severally acknowledge to owe the above-named defendant in error the sum of one hundred dollars, upon condition that the above-named plaintiff in error prosecute writ of error with effect; and if judgment be affirmed or the writ of error be discontinued or non-prossed to pay the cost adjudged accruing upon such judgment, and all other damages and costs that may be awarded upon such writ of error.

M. E. OLMSTED,
Attorney for Western Union Telegraph Company.
A. C. STAMM.

Taken and acknowledged this 25 day of May, A. D. 1885.
WILLIAM PEARSON,
Prothonotary.

44 (Endorsement:) No. 23. May term, 1885. Supreme court of Pennsylvania, middle district. Western Union Telegraph Company, plaintiff in error, *v.* Commonwealth of Pennsylvania, defendant in error. Dauphin county. *Præcipe*, affidavit, and recognizance for writ of error. Filed May 25, 1885. M. E. Olmstead, attorney for plaintiff in error.

Assignments of Error.

Supreme Court of Pennsylvania, Middle District. May Term, 1885.

WESTERN UNION TELEGRAPH COMPANY
v.
COMMONWEALTH OF PENNSYLVANIA. } No. 23.

I. The court erred in overruling defendant's first exception, which exception was as follows:

45 "1. The court erred in declining to find as requested in defendant's first point, which point was as follows:

"1. That the taxation by the State of Pennsylvania of receipts which are the property, owned in New York, of a corporation of the State of New York, is in violation of a necessary implication of the Constitution of the United States that each State shall have jurisdiction only over property within its territorial limits."

II. The court erred in overruling defendant's second exception, which exception was as follows:

"2. The court erred in declining to find as requested in defendant's second point, which was as follows:

"2. That the taxation by the State of Pennsylvania of the whole or any portion of $170,000, the receipts of the Western Union Telegraph Company upon messages sent from points in Pennsylvania to points in other States, although payment for the said mes-

46 sages was actually received in Pennsylvania, is in violation of clause four of section eight, article I, of the Constitution of the United States, which declares that Congress shall have power to regulate commerce with foreign nations and among the several States and with the Indian tribes."

III. The court erred in overruling defendant's third exception, which exception was as follows:

"3. The court erred in declining to find as requested in defendant's third point, which was as follows:

"3. That the taxation by the State of Pennsylvania of the whole or any portion of $170,000, the receipts of the Western Union Telegraph Company for messages sent from points in other States to points in Pennsylvania, said receipts never having been physically within the State of Pennsylvania, is in violation of clause four of section eight of article I of the Constitution of the United States,

which reserves to Congress the power to regulate commerce
47 with foreign nations and among the several States."

IV. The court erred in overruling defendant's fourth exception, which exception was as follows:

"4. The court erred in declining to find as requested in defendant's fourth point, which was as follows:

"4. That the taxation by the State of Pennsylvania of the whole or any portion of $650,000, the receipts of the Western Union Telegraph Company for messages sent from points outside of Pennsylvania to points outside of Pennsylvania, but over lines partly within said State, and said receipts never having been physically within the State of Pennsylvania, is in violation of clause four of section eight of article I of the Constitution of the United States, which reserves to Congress the power to regulate commerce with foreign nations and among the several States."

V. The court erred in overruling defendant's fifth exception,
48 which exception was as follows:

"5. The court erred in declining to find as requested in defendant's fifth point, which was as follows:

"5. That the act of June 7, 1879, if it warrants the imposition of a tax upon the receipts of the Western Union Telegraph Company from messages sent from Pennsylvania into other States or from other States into Pennsylvania, or from other States to other States passing through the State of Pennsylvania, or from messages sent by or on behalf of the United States Government or by an officer thereof, is void because in conflict with the act of Congress passed July 24, 1866 (14 Statutes at Large, p. 221, Revised Statutes, p. 1024, section 5263, *et seq.*), said section having been duly accepted and adopted by the Western Union Telegraph Company."

VI. The court erred in overruling defendant's sixth exception, which exception was as follows:

49 "6. The court erred in declining to find as requested in defendant's sixth point, which was as follows:

"6. That The Western Union Telegraph Company, defendant, is in no event liable for a larger sum than $1,362.38, being the tax upon $170,297.87, receipts derived from messages sent between points both of which are within the State of Pennsylvania."

VII. The court erred in overruling defendant's seventh exception, which exception was as follows:

"7. The court erred in its first conclusion of law as follows:

"1. That defendant is liable for the tax in question upon the whole sum of $170,297.87, gross receipts for messages sent from point to point within the State."

VIII. The court erred in overruling defendant's eight- exception, which was as follows:

"8. The court erred in its second conclusion of law as follows:

"2. That defendant is liable for said tax upon one-third
50 of $170,000, gross receipts from messages sent from points within the State to points in other States."

IX. The court erred in overruling defendant's ninth exception, which exception was as follows:

"9. The court erred in its third conclusion of law as follows:

"3. That defendant is liable for said tax upon one-third of $170,000, gross receipts from messages sent from points in other States to points within this State."

X. The court erred in overruling defendant's tenth exception, which exception was as follows:

"10. The court erred in its fourth conclusion of law as follows:

"4. That defendant is liable for said tax upon one-twelfth of $650,000, gross receipts for messages from points in other States to points in other States which passed over lines partly within this State."

XI. The court erred in overruling defendant's eleventh exception, which exception was as follows:

"11. The court erred in its fifth conclusion of law as follows:

51 "5. There is due from defendant to the Commonwealth in this case as follows:

Receipts for messages within the State, $170,297.87; tax	$1,362 38
Receipts for messages sent out of the State, $170,000; ⅓, $56,666.67; tax	453 34
Receipts for messages sent into the State, $170,000; ⅓, $56,666.67; tax	453 34
Receipts for messages sent through the State, $650,000; 1/12, $54,166.66; tax	433 33
Interest from Jan. 20, 1885, to May 12, 1885, @ 12% per annum	99 99
Attorney general's commission, @ 5%	135 11
	$2,937 49

For which sum judgment is directed to be entered against defendant if exceptions be not filed within the time limited by law."

XI. The court erred in overruling defendant's twelfth exception, which exception was as follows:

"12. The court erred in not directing judgment to be entered in favor of defendant."

M. E. OLMSTED,
Attorney for Plaintiff in Error.

52 Endorsement: No. 23. May term, 1885. Western Union Telegraph Co. *v.* Commonwealth of Pennsylvania. Assignments of error. Filed June 1, 1885.

Opinion of Supreme Court.

WESTERN UNION TELEGRAPH CO. *v.* COMMONWEALTH.

Error to C. P. of the county of Dauphin.

Per curiam:

This judgment is affirmed on the opinion of the learned judge in the court below.

which reserves to Congress the power to regulate commerce
47 with foreign nations and among the several States."

IV. The court erred in overruling defendant's fourth exception, which exception was as follows:

"4. The court erred in declining to find as requested in defendant's fourth point, which was as follows:

"4. That the taxation by the State of Pennsylvania of the whole or any portion of $650,000, the receipts of the Western Union Telegraph Company for messages sent from points outside of Pennsylvania to points outside of Pennsylvania, but over lines partly within said State, and said receipts never having been physically within the State of Pennsylvania, is in violation of clause four of section eight of article I of the Constitution of the United States, which reserves to Congress the power to regulate commerce with foreign nations and among the several States."

V. The court erred in overruling defendant's fifth exception,
48 which exception was as follows:

"5. The court erred in declining to find as requested in defendant's fifth point, which was as follows:

"5. That the act of June 7, 1879, if it warrants the imposition of a tax upon the receipts of the Western Union Telegraph Company from messages sent from Pennsylvania into other States or from other States into Pennsylvania, or from other States to other States passing through the State of Pennsylvania, or from messages sent by or on behalf of the United States Government or by an officer thereof, is void because in conflict with the act of Congress passed July 24, 1866 (14 Statutes at Large, p. 221, Revised Statutes, p. 1024, section 5263, *et seq.*), said section having been duly accepted and adopted by the Western Union Telegraph Company."

VI. The court erred in overruling defendant's sixth exception, which exception was as follows:

49 "6. The court erred in declining to find as requested in defendant's sixth point, which was as follows:

"6. That The Western Union Telegraph Company, defendant, is in no event liable for a larger sum than $1,362.38, being the tax upon $170,297.87, receipts derived from messages sent between points both of which are within the State of Pennsylvania."

VII. The court erred in overruling defendant's seventh exception, which exception was as follows:

"7. The court erred in its first conclusion of law as follows:

"1. That defendant is liable for the tax in question upon the whole sum of $170,297.87, gross receipts for messages sent from point to point within the State."

VIII. The court erred in overruling defendant's eight- exception, which was as follows:

"8. The court erred in its second conclusion of law as follows:

"2. That defendant is liable for said tax upon one-third
50 of $170,000, gross receipts from messages sent from points within the State to points in other States."

IX. The court erred in overruling defendant's ninth exception, which exception was as follows:

"9. The court erred in its third conclusion of law as follows:

"3. That defendant is liable for said tax upon one-third of $170,000, gross receipts from messages sent from points in other States to points within this State."

X. The court erred in overruling defendant's tenth exception, which exception was as follows:

"10. The court erred in its fourth conclusion of law as follows:

"4. That defendant is liable for said tax upon one-twelfth of $650,000, gross receipts for messages from points in other States to points in other States which passed over lines partly within this State."

XI. The court erred in overruling defendant's eleventh exception, which exception was as follows:

"11. The court erred in its fifth conclusion of law as follows:

51 "5. There is due from defendant to the Commonwealth in this case as follows:

Receipts for messages within the State, $170,297.87; tax	$1,362 38
Receipts for messages sent out of the State, $170,000; ⅓, $56,666.67; tax	453 34
Receipts for messages sent into the State, $170,000; ⅓, $56,666.67; tax	453 34
Receipts for messages sent through the State, $650,000; 1/12, $54,166.66; tax	433 33
Interest from Jan. 20, 1885, to May 12, 1885, @ 12% per annum	99 99
Attorney general's commission, @ 5%	135 11
	$2,937 49

For which sum judgment is directed to be entered against defendant if exceptions be not filed within the time limited by law."

XI. The court erred in overruling defendant's twelfth exception, which exception was as follows:

"12. The court erred in not directing judgment to be entered in favor of defendant."

M. E. OLMSTED,
Attorney for Plaintiff in Error.

52 Endorsement: No. 23. May term, 1885. Western Union Telegraph Co. *v.* Commonwealth of Pennsylvania. Assignments of error. Filed June 1, 1885.

Opinion of Supreme Court.

WESTERN UNION TELEGRAPH CO. *v.* COMMONWEALTH.

Error to C. P. of the county of Dauphin.

Per curiam:

This judgment is affirmed on the opinion of the learned judge in the court below.

Endorsement: No. 23. May term, 1885. Western Union Telegraph Company *v.* Commonwealth. Opinion, *per curiam.* Filed June 4, 1885.

Return to Writ of Error.

And now here, on this day, to wit, Sept. 24th, A. D. 1885,
53 the said The Western Union Telegraph Company produced to the supreme court of Pennsylvania here the writ of the United States of America for the correcting of errors of and upon the premises, commanding the record and proceedings aforesaid of the judgment aforesaid so as aforesaid rendered, with all things touching the same, to be transmitted to the Supreme Court of the United States to be held at the city of Washington on the second Monday of October next, which writ of error is hereunto attached.

In pursuance whereof and according to the form and effect of the act of Congress in such case made and provided a transcript of the record and proceedings of the judgment aforesaid so as aforesaid rendered, with all things relating to the same, together with the said writ of error, are hereby transmitted to the said Supreme Court of the United States accordingly.

54 *Petition for Allocatur.*

To the Honorable Joseph P. Bradley, justice of the Supreme Court of the United States:

The petition of the Western Union Telegraph Company respectfully showeth—

That your petitioner is a corporation created by and existing under the laws of the State of New York, having its principal office in the city of New York, in said State.

That it owns or leases and operates lines of telegraph in every State of the Union, in the Territories, and in Canada, and lines of ocean cable between this county and Europe.

That a portion of its receipts are derived from the sending of telegraphic messages over continuous lines of telegraph partly within the State of Pennsylvania.

That some of said messages are sent between points both within the State of Pennsylvania, some from points in Pennsylvania to points outside of Pennsylvania, some from points outside of Pennsylvania to points in Pennsylvania, and some between points
55 both of which are outside of the State of Pennsylvania, but over lines of telegraph passing through the State of Pennsylvania.

That the business of the company in Pennsylvania and elsewhere is transacted through local agents or superintendents, who report to the general office, make settlements, and remit balances monthly into the general treasury at its general office in the city of New York.

That the auditor general and State treasurer of Pennsylvania settled an account against your petitioner for a tax upon its gross receipts derived from telegraphic business as aforesaid, claimed

to be due to the said State for the six months ending June 30, 1884.

That your petitioner appealed from the action of the State treasurer and auditor general to the court of common pleas of Dauphin county, to No. 480, April term, 1885, as provided by law, and
56 upon the trial of the cause submitted, through counsel, the following points:

"1. That the taxation by the State of Pennsylvania of receipts which are the property, owned in New York, of a corporation of the State of New York is in violation of a necessary implication of the Constitution of the United States that each State shall have jurisdiction only over property within its territorial limits.

"2. That the taxation by the State of Pennsylvania of the whole or any portion of $170,000, the receipts of the Western Union Telegraph Company upon messages sent from points in Pennsylvania to points in other States, although payment for said messages was actually received in Pennsylvania, is in violation of clause four of section eight of article I of the Constitution of the United States, which declares that 'Congress shall have power to regulate
57 commerce with foreign nations and among the several States and with the Indian tribes.'

"3. That the taxation by the State of Pennsylvania of the whole or any portion of $170,000, the receipts of the Western Union Telegraph Company for messages sent from points in other States to points in Pennsylvania, said receipts never having been physically within the State of Pennsylvania, is in violation of clause four of section eight of article I of the Constitution of the United States, which reserves to Congress the power to regulate commerce with foreign nations and among the several States.

"4. That the taxation by the State of Pennsylvania of the whole or any portion of $650,000, the receipts of the Western Union Telegraph Company for messages sent from points outside of Pennsylvania to points outside of Pennsylvania, but over lines partly within said State, and said receipts never having been phys-
58 ically within the State of Pennsylvania, is in violation of clause four of section eight of article I of the Constitution of the United States, which reserves to Congress the power to regulate commerce with foreign nations and among the several States.

"5. That the act of June 7, 1879, if it warrants the imposition of a tax upon the receipts of the Western Union Telegraph Company for messages sent from Pennsylvania into other States, or from other States into Pennsylvania, or from other States to other States passing through the State of Pennsylvania, or from messages sent by or on behalf of the United States Government or by an officer thereof, is void because in conflict with the act of Congress passed July 24, 1866 (14 Statutes at Large, p. 221, Revised Statutes, p. 1024, section 5263, *et seq.*), said section having been duly accepted and adopted by the Western Union Telegraph Company.

59 "6. That The Western Union Telegraph Company, defendant, is in no event liable for a larger sum than $1,362.38, being the tax upon $170,297.87, receipts derived from messages sent between points both of which are within the State of Pennsylvania."

That the said court of common pleas of Dauphin county, in an opinion filed by the Honorable J. W. Simonton, president judge thereof, declined to find as requested in the points submitted by your petitioner, and in passing thereon decided as follows:

"We decline to find all or any of the conclusions of law which we are requested to find by defendant with the same effect as if each were referred to by number and separately declined.

"Instead thereof we find the following:

"1. That defendant is liable for the tax in question upon the whole sum of $170,297.87, gross receipts for messages sent from point to point within the State.

60 "2. That defendant is liable for said tax upon one-third of $170,000, gross receipts from messages sent from points within the State to points in other States.

"3. That defendant is liable for said tax upon one-third of $170,000, gross receipts from messages sent from points in other States to points within this State.

"4. That defendant is liable for said tax upon one-twelfth of $650,000, gross receipts for messages from points in other States to points in other States which passed over lines partly within this State.

"5. There is due from defendant to the Commonwealth in this case as follows:

Receipts for messages within the State, $170,297.87; tax	$1,362 38
Receipts for messages sent out of the State, $170,000; ⅓, $56,666.67; tax	453 34
Receipts for messages sent into the State, $170,000; ⅓, $56,666.67; tax	453 34
Receipts for messages sent through the State, $650,000; 1/12, $54,166.66; tax	433 33
61 Interest from Jan. 20, 1885, to May 12, 1885, @ 12% per annum	99 99
Attorney general's commission, 5%	135 11
	$2,937 49

For which sum judgment is directed to be entered against defendant if exceptions be not filed within the time limited by law."

That your petitioner filed exceptions to the ruling of the court upon the points submitted as aforesaid, and also to the conclusions of law embraced in the language of the opinion above quoted.

That the said exceptions were all overruled by the court of common pleas of Dauphin county, and judgment entered against your petitioner for $2,957.49.

That by writ of error the said cause was by your petitioner removed to the supreme court of Pennsylvania, to No. 23, May term, 1885, middle district, of said court.

That in the supreme court of Pennsylvania your petitioner assigned as error the overruling by the court of common pleas
62 of Dauphin county of the exceptions above stated, embracing the points submitted by your petitioner upon the trial of the cause in the said court as above shown.

That the supreme court of Pennsylvania, upon the 4th day of June, A. D. 1885, affirmed the judgment of the court of common pleas of Dauphin county.

That the supreme court of Pennsylvania, in which said cause was heard and decided, is the highest court of record and the court of last resort in the Commonwealth of Pennsylvania.

That the judgment of the said court is final.

That the judgment of said court, as already shown, necessarily involved the decision of a Federal question, and that said judgment is in favor of the State law and against the immunity claimed by your petitioner under the Constitution of the United States.

63 Wherefore your petitioner, herewith presenting a bond, with security, for approval, prays that a writ of error may be allowed to issue to the said supreme court of Pennsylvania to bring up the record to the Supreme Court of the United States for correction in that which violates the Constitution and laws thereof, and that the citation to defendant may accompany the same.

And it will ever pray, &c.

WESTERN UNION TELEGRAPH COMPANY,
By its attorneys, M. E. OLMSTED,
WILLARD BROWN.

Allocatur of Writ.

The writ of error is allowed in the above case.
July 2, 1885.

JOSEPH P. BRADLEY,
Associate Justice of the Supreme Court of the United States.

Endorsement: Western Union Telegraph Company *v.* Com-
64 monwealth of Pennsylvania. Petition of allocatur. Filed in S. C. of Pa. July 3, 1885.

Writ of Error Bond.

Supreme Court of the United States.

WESTERN UNION TELEGRAPH COMPANY, Plaintiff in Error,
v.
COMMONWEALTH OF PENNSYLVANIA, Defendant in Error. } No. 23.

In error to the supreme court of Pennsylvania, middle district.

MAY 7, 1875.

Know all men by these presents that we, the Western Union Telegraph Company, a corporation of the State of New York, and Thomas T. Eckert and W. C. Humstone, of the city of New York, county of New York, and State of New York, are held and firmly bound unto the Commonwealth of Pennsylvania in the sum of five thousand dollars ($5,000), lawful money of the United States of America, to be paid to the said Commonwealth of Pennsylvania or her certain attorney or assigns; to which payment, well and truly to be made,

we do bind ourselves and each of us, our heirs, executors,
65 administrators, and successors, firmly by these presents.

Sealed with our seals and dated the 25th day of June, A. D. 1885.

Whereas lately at a court of common pleas in and for the county of Dauphin judgment was entered against the Western Union Telegraph Company, at the suit of the Commonwealth of Pennsylvania, of April term, 1885, No. 480, which judgment was afterwards affirmed by the supreme court of the State of Pennsylvania, in a certain plea and suit in said court, of May term, 1885, No. 23, and the said Western Union Telegraph Company has prosecuted a writ of error to the Supreme Court of the United States to reverse the judgment rendered in the above-entitled suit by the supreme court of Pennsylvania:

Now, the condition of this obligation is such that if the
66 above-named Western Union Telegraph Company, plaintiff in error, shall prosecute its writ of error with effect and answer all damages and costs if it shall fail to make good its plea, then this obligation to be void; otherwise to remain in full force and effect.

[Seal of the Western Union Telegraph Company.]

WESTERN UNION TELEGRAPH COMPANY,
By NORVIN GREEN, *President.*
Attest: A. R. BREWER, *Secretary.*
THOMAS T. ECKERT. [SEAL.]
W. C. HUMSTONE. [SEAL.]

Approved July 2, 1885.

JOSEPH P. BRADLEY,
Associate Justice of the Supreme Court of U. States.

Endorsement: Western Union Telegraph Company *v.* Commonwealth of Pennsylvania. Bond. Filed in S. C. of Penna. July 3, 1885.

Certificate.

67 STATE OF PENNSYLVANIA:

In testimony that the foregoing, contained on pages six to sixty-seven, inclusive, is a full, true, and correct copy of the record and proceedings of the supreme court of Pennsylvania, the highest court of law and equity in the State of Pennsylvania, in the case lately depending therein, to No. 23, of May term, 1885, middle district, wherein The Western Union Telegraph Company was plaintiff in error and The Commonwealth of Pennsylvania was defendant in error, I have hereunto subscribed my name and affixed the seal of the said supreme court, at Harrisburg, this twenty-fifth day of September, A. D. 1885.

[Seal of the Supreme Court of Pennsylvania, 1776.]

WILLIAM PEARSON,
Prothonotary of the Supreme Court of Pa., Middle District.

Assignments of Errors.

68 In the Supreme Court of the United States. October Term, 1885.

WESTERN UNION TELEGRAPH COMPANY
vs.
COMMONWEALTH OF PENNSYLVANIA. } 990.

Surwrit of error by Western Union Telegraph Company to the supreme court of Pennsylvania.

1. The learned court erred in sustaining the court of common pleas of Dauphin county in overruling the following point submitted on behalf of the company:

"That the taxation by the State of Pennsylvania of receipts which are the property, owned in New York, of a corporation of the State of New York is in violation of a necessary implication of the Constitution of the United States that each State shall have jurisdiction only over property within its territorial limits."

2. The learned court erred in sustaining the court of common pleas of Dauphin county in overruling the following point
69 submitted on behalf of the company:

"That the taxation by the State of Pennsylvania of the whole or any portion of $170,000, the receipts of the Western Union Telegraph Company upon messages sent from points in Pennsylvania to points in other States, although payment for the said messages was actually received in Pennsylvania, is in violation of clause four of section eight of article I of the Constitution of the United States, which declares that 'Congress shall have power to regulate commerce with foreign nations and among the several States and with the Indian tribes.'"

3. The learned court erred in sustaining the court of common pleas of Dauphin county in overruling the following point submitted on behalf of the company:

"That the taxation by the State of Pennsylvania of the whole or any portion of $170,000, the receipts of the Western Union Telegraph Company for messages sent from points in other States to points in Pennsylvania, said receipts never having been physically within the State of Pennsylvania, is in violation of clause four of section eight of article I of the Constitution of the United
70 States, which reserves to Congress the power to regulate commerce with foreign nations and among the several States."

4. The learned court erred in sustaining the court of common pleas of Dauphin county in overruling the following point submitted on behalf of the company:

"That the taxation by the State of Pennsylvania of the whole or any portion of $650,000, the receipts of the Western Union Telegraph Company for messages sent from points outside of Pennsylvania to points outside of Pennsylvania, but over lines partly within said State, the said receipts never having been physically within the State of Pennsylvania, is in violation of clause four of section

eight of article I of the Constitution of the United States, which reserves to Congress the power to regulate commerce with foreign nations and among the several States."

5. The learned court erred in sustaining the court of common pleas of Dauphin county in overruling the following point submitted on behalf of the company:

"That the act of June 7, 1879, if it warrants the imposition
71 of a tax upon the receipts of the Western Union Telegraph Company for messages sent from Pennsylvania into other States, or from other States into Pennsylvania, or from other States to other States passing through the State of Pennsylvania, or from messages sent by or on behalf of the United States Government or by an officer thereof, is void because in conflict with the act of Congress passed July 24, 1866 (14 Statutes at Large, p. 221, Revised Statutes, p. 1024, section 5263, *et seq.*), said section having been duly accepted and adopted by the Western Union Telegraph Company."

6. The learned court erred in sustaining the court of common pleas of Dauphin county in overruling the following point submitted on behalf of the company.

"That The Western Union Telegraph Company, defendant, is in no event liable for a larger sum than $1,362.38, being the tax upon $170,297.87, receipts derived from messages sent between points both of which are within the State of Pennsylvania."

7. The learned court erred in not sustaining the company's exception to the following conclusion of law by the court of common pleas of Dauphin county:

72 "That defendant is liable for the tax in question upon the whole sum of $170,297.87, gross receipts for messages sent from point to point within the State."

8. The learned court erred in not sustaining the company's exception to the following conclusion of law by the court of common pleas of Dauphin county:

"That defendant is liable for said tax upon one-third of $170,000, gross receipts from messages sent from points within the State to points in other States."

9. The learned court erred in not sustaining the company's exception to the following conclusion of law by the court of common pleas of Dauphin county:

"That defendant is liable for said tax upon one-third of $170,000, gross receipts from messages sent from points in other States to points within this State."

10. The learned court erred in not sustaining the company's exception to the following conclusion of law by the court of common pleas of Dauphin county:

"That defendant is liable for said tax upon one-twelfth of $650,000, gross receipts for messages from points in other States to points in other States which passed over lines partly within this State."

73 11. The learned court erred in not sustaining the company's exception to the following conclusion of law by the court of common pleas of Dauphin *company.*

"There is due from defendant to the Commonwealth in this case as follows:

Receipts for messages within the State, $170,297.87; tax	$1,362 38
Receipts for messages sent out of the State, $170,000; ⅓, $56,666.67; tax	453 34
Receipts for messages sent into the State, $170,000; ⅓, $56,666.67; tax	453 34
Receipts for messages sent through the State, $650,000; 1/12, $54,166.66; tax	433 33
Interest from January 20, 1885, to May 12, 1885, at 12 per cent. per annum	99 99
Attorney general's commission, 5 per cent.	135 11
	$2,937 49

For which sum judgment is directed to be entered against defendant if exceptions be not filed within the time limited by law."

12. The learned court erred in affirming the judgment of the court of common pleas of Dauphin county in favor of the Commonwealth of Pennsylvania and against the Western Union Telegraph Company.

13. The learned court erred in not reversing the judgment
74 of the court of common pleas of Dauphin county.

To the honorable the judges of the Supreme Court of the United States of America:

The petitioner prays for a reversal of the judgment entered against it in the supreme court of Pennsylvania for the reasons assigned above.

WESTERN UNION TELEGRAPH COMPANY,
By its attorney, M. E. OLMSTED.

75 [Endorsed:] Supreme Court U. S. 1885, Oct'r term. No. 990. The Western Union Telegraph Co., pl'ff in error, — The Commonwealth of Pennsylvania. Assignment of errors & prayer for reversal. Olmsted.

Stamped: Office Supreme Court U. S. Filed Dec. 9, 1885. James H. McKenney, clerk.

Endorsed on cover: Pennsylvania supreme court. No. 317. The Western Union Telegraph Company, plaintiff in error, *vs.* The Commonwealth of Pennsylvania. Filed September 29, 1885.

In the Supreme Court U. S.
FILED.
OCT 2 1888
JAMES H. McKENNEY,
CLERK.

Supreme Court of the United States.

No. 56, OCTOBER TERM, 1888.

Western Union Telegraph Company,

Plaintiff in Error,

vs.

Commonwealth of Pennsylvania.

Writ of Error to Supreme Court of the State of Pennsylvania.

PAPER BOOK OF PLAINTIFF IN ERROR.

M. E. OLMSTED,
BROWN & WELLS,
Attorneys for Plaintiff in Error.

In the Supreme Court of the United States.

No. 56, October Term, 1888.

THE WESTERN UNION TELEGRAPH COMPANY,

Plaintiff in Error,

vs.

THE COMMOMWEALTH OF PENNSYLVANIA.

Writ of Error to the Supreme Court of the State of Pennsylvania.

STATEMENT OF THE CASE.

The Western Union Telegraph Company is a corporation of the State of New York, having its principal office, place of business and general treasury in the city of New York, but owning or leasing and operating telegraph lines in most, or all, of the States and Territories of the United States and in Canada. Its lines extend into and through the State of Pennsylvania, and it sends messages not only between points, both of which are within the State of Pennsylvania, but also from points in Pennsylvania to points in other States, from points in other States to points in Pennsylvania, and from points in foreign States over lines passing through the State of Pennsylvania, to points in other foreign States.

The company, by formal resolution of its board of directors, adopted June 5, 1867, and duly filed with the Postmaster General, accepted the provisions of the act of Congress of July 24, 1866, (14 Statutes at Large, p. 221; Revised Statutes, p. 1024

section 5263, *et seq.*), entitled "an act to aid in the construction of telegraph lines, and to secure to the Government the use of the same for postal, military, and other purposes."

This case involves the right of the Commonwealth of Pennsylvania to collect a tax upon the gross receipts of the company, for the six months ending June 30, 1884, derived from its business of sending telegraphic messages in, into, out of and through the State of Pennsylvania, all of the said receipts having been, at the time of the assessment of the tax, in the general treasury of the company in the State of New York, and many of them never having been, at any time, physically within the State of Pennsylvania.

The objection of the company to this attempted taxation is three-fold, and may be thus briefly stated:

1. The taxation, by the State of Pennsylvania, of property having its *situs* in New York, and owned by a corporation of the State of New York, is in violation of a necessary implication of the Constitution of the United States, that each State shall have jurisdiction only over property within its territorial limits.

2. The taxation, by the State of Pennsylvania, of receipts of the Western Union Telegraph Company, for messages sent from Pennsylvania into other States, or from other States into Pennsylvania, or from foreign States, over lines passing through Pennsylvania, to points in other foreign States, is in violation of that clause of section 8, of article I, of the Constitution of the United States, which declares that "Congress shall have power * * * * * * * to regulate commerce with foreign nations, and among the several States, and with the Indian tribes."

4. The taxation of the gross receipts of the Western Union Telegraph Company derived from its business of sending telegraphic messages, is in violation of the act of Congress of July 24, 1866, above referred to.

The case originated thus: The seventh section of the Pennsylvania revenue act of June 7, 1879, which, for convenience of reference is herein printed in full (see page 8) requires that every railroad, telegraph, &c., company shall pay "a tax of eight tenths of one per centum upon the Gross Receipts of said company, for tolls and transportations, *telegraph business* or express

business;" and requires semi-annual returns to be made to the Auditor General. Under earlier statutes, not necessary to discuss here, the collection of taxes from corporations in Pennsylvania is effected by the statement, or, as it is termed, "settlement" of an account by the Auditor General, approved by the State Treasurer, from which settlement, if dissatisfied, the corporation may, within sixty days, appeal to the Court of Common Pleas of Dauphin County, specifying in said appeal, its objections to the settlement. The case then assumes the form of a suit at law, in which the Commonwealth is plaintiff and the corporation is defendant.

For the six months ending June 30, 1884, the telegraph company reported to the Auditor General its Gross Receipts from telegraph business within the State of Pennsylvania, (see record, pp. 3 and 4,) amounting to $170,279 87, upon which the tax, at eight mills, would have been $1,362 38, and declined to report its receipts from inter-State messages. The Auditor General and State Treasurer refused to accept this report as the basis of taxation, but stated an account against the company, (record, p. 4,) in which they *estimated* its Gross Receipts, for the period named, to have been $10,330,719 12, upon which the eight-mill tax would amount to $82,645 75. They also estimated the mileage of the company, both in and out of Pennsylvania, and considered that there was earned in Pennsylvania, that proportion of the entire receipts of the company which its mileage in Pennsylvania bore to its entire mileage. There is no express statutory authority for such an apportionment, but it is in accordance with the practice of the department, sanctioned by the courts of the State, in cases where the works of a corporation are partly in Pennsylvania and partly in one or more other States.

The company appealed from this account, (see Appeal, record, p. 5,) and upon the trial of the case in the Dauphin county court, made a classification of all of its receipts from business in any way touching the State of Pennsylvania, showing the amounts from State and inter-business respectively.

In accordance with the usual custom in the trial of State tax cases, this case was, by agreement, tried without the intervention of a jury, the Court finding both the law and the facts, under an act of Assembly passed for that purpose. In such cases the

findings of facts by the court has the same effect as a special verdict by a jury. The findings of facts as well as conclusions of law are distinctly stated in the opinion of the Dauphin County Court, filed by Mr. Justice Simonton, its learned President, (record, p. 12,) in which the points submitted on behalf of the company (record, p. 11) are overruled, and judgment at eight mills directed to be entered in favor of the Commonwealth for tax upon $170,297 87, receipts for messages within the State; $56,666 67, receipts for messages sent from points in Pennsylvania to points in other States; $56,666 67, receipts for messages sent from other States into Pennsylvania, and upon $54,166 66, receipts for messages sent from foreign States over wires partly within the State of Pennsylvania, to points in other foreign States.

Defendant's exceptions to this decision (record, p. 15) were overruled by the Court, (record, p. 17,) and judgment entered in favor of the Commonwealth and against the company May 16, 1885, for $2,937 49.

By writ of error, the case was then carried by the company to the Supreme Court of Pennsylvania, where, after argument of the assignments of error, (record, p. 21,) the opinion of the Court of Common Pleas of Dauphin county was affirmed in an opinion by the Supreme Court, which, in its entirety, reads as follows:

"Per curiam: This judgment is affirmed on the opinion of the learned judge in the court below." *Western Union Telegraph Company* vs. *Commonwealth*, *110 Penn'a*, *405*.

The Supreme Court of the State of Pennsylvauia, being the highest court of record, and the court of last resort in said State, a writ of error to said court was, upon the petition of the company, issued out of this court, whereby the case is now brought here for consideration.

II. ASSIGNMENT OF ERRORS.

WESTERN UNION TELEGRAPH COMPANY
vs.
COMMOMWEALTH OF PENNSYLVANIA.
} In the Supreme Court of the United States.

SUR WRIT OF ERROR BY WESTERN UNION TELEGRAPH COMPANY, TO THE SUPREME COURT OF PENNSYLVANIA.

1. The learned Court erred in sustaining the Court of Common Pleas of Dauphin county in overruling the following point submitted on behalf of the company:

"That the taxation by the State of Pennsylvania of receipts which are the property, owned in New York, of a corporation of the State of New York, is in violation of a necessary implication of the Constitution of the United States that each State shall have jurisdiction only over property within its territorial limits."

2. The learned Court erred in sustaining the Court of Common Pleas of Dauphin county in overruling the following point submitted on behalf of the company:

"That the taxation by the State of Pennsylvania of the whole or any portion of $170,000, the receipts of the Western Union Telegraph Company upon messages sent from points in Pennsylvania to points in other States, although payment for the said messages was actually received in Pennsylvania, is in violation of clause four* of section eight of Article I of the Constitution of the United States, which declares that 'Congress shall have power to regulate commerce with foreign nations and among the several States and with the Indian tribes."

*More strictly speaking, clause three, but every judge and every attorney in Pennsylvania uses Brightly's Purdon's Digest, in which section VIII of article I, of the United States is divided into nineteen paragraphs or clauses, the first four reading thus:

"1. The Congress shall have power,

2. To lay and collect taxes, duties, imposts and excises, to pay the debts and provide for the common defense and general welfare of the United States; but all duties, imposts and excises shall be uniform throughout the United States.

3. To borrow money on the credit of the United States;

4. To regulate commerce with foreign nations, and among the several States and with the Indian tribes."

3. The learned Court erred in sustaining the Court of Common Pleas of Dauphin county in overruling the following point submitted on behalf of the company:

"That the taxation by the State of Pennsylvania of the whole or any portion of $170,000, the receipts of the Western Union Telegraph Company for messages sent from points in other States to points in Pennsylvania, said receipts never having been physically within the State of Pennsylvania, is in violation of clause four of section eight of Article I of the Constitution of the United States, which reserves to Congress the power to regulate commerce with foreign nations and among the several States."

4. The learned Court erred in sustaining the Court of Common Pleas of Dauphin county in overruling the following point submitted on behalf of the company:

"That the taxation by the State of Pennsylvania of the whole or any portion of $650,000, the receipts of the Western Union Telegraph Company for messages sent from points outside of Pennsylvania to points outside of Pennsylvania, but over lines partly within said State, the said receipts never having been physically within the State of Pennsylvania, is in violation of clause four of section eight of Article I of the Constitution of the United States, which reserves to Congress the power to regulate commerce with foreign nations and among the several States."

5. The learned court erred in sustaining the Court of Common Pleas of Dauphin county in overruling the following point submitted on behalf of the company:

"That the act of June 7, 1879, if it warrants the imposition of a tax upon the receipts of the Western Union Telegraph Company for messages sent from Pennsylvania into other States, or from other States into Pennsylvania, or from other States to other States passing through the State of Pennsylvania, or from messages sent by or on behalf of the United States Government, or by an officer thereof, is void because in conflict with the act of Congress passed July 24, 1866, (14 Statutes at Large, p. 221, Revised Statutes, p. 1024, section 5263, *et seq.*,) said section having been duly accepted and adopted by the Western Union Telegraph Company."

6. The learned Court erred in sustaining the Court of Common Pleas of Dauphin county in overruling the following point submitted on behalf of the company:

"That The Western Union Telegraph Company, defendant, is in no event liable for a larger sum than $1,362 38, being the tax upon $170,297 87, receipts derived from messages sent between points both of which are within the State of Pennsylvania."

7. The learned Court erred in not sustaining the company's exception to the following conclusion of law by the Court of Common Pleas of Dauphin county:

"That defendant is liable for the tax in question upon the whole sum of $170,297 87, gross receipts for messages sent from point to point within the State."

8. The learned Court erred in not sustaining the company's exception to the following conclusion of law by the Court of Common Pleas of Dauphin county:

"That defendant is liable for said tax upon one third of $170,000, gross receipts from messages sent from points within the State to points in other States."

9. The learned court erred in not sustaining the company's exception to the following conclusion of law by the Court of Common Pleas of Dauphin county:

"That defendant is liable for said tax upon one third of $170,000, gross receipts from messages sent from points in other States to points within this State."

10. The learned court erred in not sustaining the company's exception to the following conclusion of law by the Court of Common Pleas of Dauphin county:

"That defendant is liable for said tax upon one twelfth of $650,000, gross receipts for messages from points in other States to points in other States, which passed over lines partly within this State."

11. The learned court erred in not sustaining the company's exception to the following conclusion of law by the Court of Common Pleas of Dauphin county:

"There is due from defendant to the Commonwealth in this case, as follows:

Receipts for messages within the State, $170,297 87; tax	$1,362 38
Receipts for messages sent out of the State, $170,000; one third, $56,666 67; tax	453 34

Receipts for messages sent into the State, $170,000; one third, $56,666 67; tax	$453 34
Receipts for messages sent through the State, $650,000; one twelfth, $54,166 66; tax	433 33
Interest from January 20, 1885, to May 12, 1885, at twelve per cent. per annum, ...	99 99
Attorney General's commission, five per cent., . . .	135 11
	$2,937 49

For which sum judgment is directed to be entered against defendant if exceptions be not filed within the time limited by law."

12. The learned court erred in affirming the judgment of the Court of Common Pleas of Dauphin county, in favor of the Commonwealth of Pennsylvania and against the Western Union Telegraph Company.

13. The learned court erred in not reversing the judgment of the Court of Common Pleas of Dauphin county.

———o———

III. SEVENTH SECTION OF PENNSYLVANIA REVENUE ACT OF JUNE 7, 1879.—(Pamphlet Laws of 1879, p. 112.)

"SECTION 7. That every railroad company, canal company, pipe line company, conduit company, steamboat company, slack-water navigation company, transportation company, street passenger railway company, and every other company or limited partnership, now or hereafter incorporated or organized by or under any law of this commonwealth, or now or hereafter incorporated or organized by any other state, and doing business in this commonwealth, and owning, operating, or leasing to or from another corporation, company, or limited partnership, any railroad, canal, pipe line, slack-water navigation, or street passenger railway, or other device for the transportation of freight or passengers, or in any way engaged in the business of transporting freight or passengers, and every telegraph company incorporated under the laws of this or any other state and doing business in this commonwealth, and every express company, and any pal-

ace car and sleeping car company, incorporated or unincorporated, doing business in this commonwealth, shall pay to the state treasurer for the use of the commonwealth a tax of eight tenths of one per centum upon the gross receipts of said company for tolls and transportation, *telegraph business* or express business; the said tax shall be paid semi-annually upon the last days of July and January in each year, the first payment to be due on the last day of July, Anno Domini one thousand eight hundred and seventy-nine; and for the purpose of ascertaining the amount of the same, it shall be the duty of the treasurer or other proper officer of said company or limited partnership, to transmit to the auditor general a statement, under oath or affirmation, of the amount of gross receipts of the said company or limited partnership, derived from all sources during the preceding six months ending on the first days of July and January; and if any such company or limited partnership shall neglect or refuse for a period of thirty days after such tax becomes due, to make said returns or to pay the same, the amount thereof, with an addition of ten per centum thereto, shall be collected for the use of the commonwealth as other taxes are recoverable by law from said companies or limited partnership: *Provided*, That whenever any corporation, company, or limited partnership, liable to a tax on gross receipts under the provisions of this section, possesses and exercises the right to mine or purchase and sell coal, the receipts derived purely from the sale of coal so mined or purchased by said company or limited partnership shall not be taxed, but every such company or limited partnership shall keep an account of the said coal, and in the said account shall charge itself with the transportation thereof, at the same rates as are charged or would be charged by the said company or limited partnership for the transportation of similar freight for other companies or individuals, and the sums so charged for transportation shall be returned by the said company or limited partnership to the auditor general, and shall be taxed as a part of the gross receipts of said company or limited partnership: *And provided further*, That in any case where the works of one corporation, company, or limited partnership are leased to and operated by another corporation, company, or limited partnership, the taxes imposed by this section shall be adjusted between the said corporations,

companies, or limited partnerships, in accordance with the terms of their respective leases or agreements, but for the payment of the said taxes the commonwealth shall first look to the corporation, company, or limited partnership operating the works, and upon payment by the said company or limited partnership of a tax upon the entire receipts derived from the operation thereof, the corporation, company, or limited partnership from which the said works are leased, shall not be held liable under this section for any tax upon the proportion of said receipts received by it as rental for the use of said works."

IV. ARGUMENT FOR PLAINTIFF IN ERROR.

In this suit, the State of Pennsylvania claims, and by her own courts has been allowed, a tax upon the receipts of the Western Union Telegraph Company, for all telegraphic messages sent over those of its lines in any way touching that State.

Some of these messages were sent between points both within the State. But the greater part were inter-State messages, sent out of, into, or through Pennsylvania, over lines partly in that and partly in other States.

What is the real subject of this tax?

Said Mr. Justice Field, who delivered the opinion of this Court in *Case of the State Tax on Foreign-Held Bonds, 15 Wallace, 300, 319:*

> "The power of taxation, however vast in its character and searching in its extent, is necessarily limited to subjects within the jurisdiction of the State. These subjects are *persons, property and business.* Whatever form taxation may assume, whether as duties, imposts, excises, or licenses, it must relate to one of these subjects. It is not possible to conceive of any other, though as applied to them, the taxation may be exercised in a great variety of ways."

It is manifest that the tax in controversy cannot be sustained as a *personal* tax, the person sought to be taxed, viz: the Western Union Telegraph Company, being a corporation and citizen of the State of New York, and not of Pennsylvania.

It seems equally plain that, as a *property* tax, no portion of the claim of the Commonwealth of Pennsylvania can be sustained. The receipts, the property upon which the taxes may in any sense be said to be imposed, were all of them at the time when the taxes are alleged to have accrued or become due, as well as at the time of the statement of account by the Auditor General, in the treasury of the company in the city and State of New York. Neither the person nor the

property was within the jurisdiction of the State of Pennsylvania.

The learned judge of the Dauphin County Court, whose opinion was adopted as that of the Supreme Court of Pennsylvania, concluded, upon the authority of *St. Clair* vs. *Cox, 106, U. S. 350,* that as this New York corporation had officers and agents within the State of Pennsylvania, their presence there was sufficient to give that State jurisdiction over the property taxed, it being money which accrued to the company as Gross Receipts from business transacted by it over its lines within the State of Pennsylvania, although much of it had never been physically within the State, and all of it was in the city of New York when the tax was assessed.

As we understand the case of *St. Clair* vs. *Cox,* it decides no more than this: that where a State law provides that, if foreign corporations do business within that State, process may be served upon the officers or agents there, that law is in the nature of a contract or license, which is presumed to have been accepted by the foreign corporation when it sent its agents there to do business, or as imposing the terms upon which it might do business in that State, and, that therefore, service in the manner provided in such a law is good; although in that particular case it was held that service of the writ on the agent of the foreign corporation was not good, as it did not appear that the corporation was doing business within the State at the time of the service. The case is cetainly no authority for the position that a corporation of New York, by sending into the State of Pennsylvania an agent to transact business, thereby changes its domicile so as to draw to Pennsylvania the taxable *situs* of property actually located within the State of New York. Said Mr. Justice Paxson in *Commonwealth* vs. *Standard Oil Company, 101 Penna. 146:*

"Being a corporation, it is an invisible, artificial and intangible thing. When it sent its agents to this State to transact business it no more entered the State in point of fact than any other

foreign corporation, firm or individual who sends an agent here to open an office or branch house."

And again, on page 147:

"A foreign corporation has no domicile here and can have none; hence it cannot be said to draw to itself the constructive possessions of its property located elsewhere."

The domicile of a corporation is the State of its origin. *Potter on Corporations, sec. 10.* And it cannot migrate to another sovereignty. *Bank of Augusta* vs. *Earle, 13 Peters, 586; Paul* vs. *Virginia, 8 Wallace, 168; St. Louis* vs. *Ferry Co., 11 Wallace, 423.*

A large portion of the receipts taxed were never physically within the State of Pennsylvania, and all of them at the time the tax was assessed were actually located in New York beyond the jurisdiction of the State of Pennsylvania. That under such circumstances a tax upon property cannot be imposed would seem to be settled beyond all controversy. Said Chief Justice Marshall, in *McCullough* vs. *Maryland, 4 Wheaton, 429:*

"All subjects over which the sovereign power of a State extends are objects of taxation; but those over which it does not extend are, upon the soundest principles, exempt from taxation. This proposition may almost be pronounced self-evident."

And Mr. Justice Field said in *15 Wallace, 300, 319,* as already quoted:

"The power of taxation, however vast in its character, and searching in extent, is necessarily limited to subjects within the jurisdiction of the State."

That proposition has often been sustained by this court, as in *St. Louis* vs. *The Ferry Company, 11 Wallace, 423,* where it was decided that the boats of the Wiggins Ferry Company, a corporation of Illinois, engaged in ferrying passengers between East St. Louis, in Illinois, and the city of St. Louis, in

ferred upon it by the State of Pennsylvania. As applied to a foreign corporation, a franchise tax can be considered only in the nature of a license or condition upon which the company may do business in the State imposing the tax.

The act of 1866 applied only to companies incorporated under the laws of Pennsylvania, but the act of 1879 applies indiscriminately to foreign, as well as domestic, transportation companies, and to "every telegraph company incorporated under the laws of this, or any other, State, and doing business in this Commonwealth." As it does not apply to a foreign company at all, until it is already doing business in this Commonwealth, it can hardly be considered as a license or franchise tax; but if the act is to be construed as imposing terms upon which foreign companies may do business in Pennsylvania, it will be found that, as to the Western Union Telegraph Company, it is invalid, not only because the company is engaged in inter-State commerce, but also because the act is in conflict with the act of Congress, approved July 24, 1866, entitled "An act to aid in the construction of telegraph lines, and to secure to the Government the use of the same for postal, military, and other purposes." *Pensacola Telegraph Company* vs. *Western Union Telegraph Company, 6 Otto, 1; Western Union Telegraph Company* vs. *Massachusetts, 125 U. S., 530; Leloup* vs. *Port of Mobile 127, U. S., 640.*

If treated as a tax upon the *business* of the company, then, that business being inter-State commerce, the reasoning of Mr. Justice Strong, in the case of the *State Tax on Railway Gross Receipts, 15 Wallace, 232*, and the decision, in that case, are directly opposed by the reasoning of Mr. Justice Field, and the decision of this Court in *Gloucester Ferry Company* vs. *Pennsylvania, 114 U. S., 196.* The Gloucester Ferry Company was engaged in transporting passengers from Gloucester, in the State of New Jersey, to Philadelphia, in the State of Pennsylvania, where it had a wharf for the landing and receiving of passengers and freight. The Supreme Court of Pennsylvania, in giving its decision, had stated that the single question to be considered was whether or not the com-

pany did business within the State of Pennsylvania during the period for which taxes were imposed, and finding that it did, it declared the company to be taxable. It was, said the Pennsylvania Court, "dependent equally, not only for its business, but its power to do that business, upon both States, and might, therefore, be taxed by both." In reversing the judgment of the Pennsylvania Court, Mr. Justice Field said (p. 203):

> "As to the first reason thus expressed, it may be answered that the business of landing and receiving passengers and freight at the wharf in Philadelphia is a necessary incident to, indeed is a part of, their transportation across the Delaware river from New Jersey. Without it that transportation would be impossible. Transportation implies the taking up of persons or property at some point and putting them down at another. A tax, therefore, upon such receiving and landing of passengers and freight is a tax upon their transportation; that is, upon the commerce between the two States involved in such transportation."

Such commerce was declared to be subject to the exclusive regulation of Congress, and not subject to interference by the States. The same reason, which was given in the 15th Wallace case of the *State Tax on Railway Gross Receipts*, in support of the tax, viz: that it was a tax upon the business of the company, was, in the Gloucester Ferry case, declared to be the very reason why it was unconstitutional, the business sought to be taxed being that of inter-State commerce. And in *Leloup* vs. *Port of Mobile, 127 U. S., 640*, it is expressly decided by this Court that the inter-State business of the Western Union Telegraph Company is not subject to State taxation in any way.

But the learned judge who wrote the opinion in the 15th Wallace Gross Receipts Case, having, as already stated, declared the tax to be very manifestly a tax upon the franchises or business of the company, upon the same page, and the succeeding one, imputes to it a very different character and sustains it for a very different reason, viz: that it is a tax upon the property of the company. Said he:

the tax was a regulation of inter-State commerce, and, therefore void.

If a bill of lading is so necessarily associated with the shipment of articles of commerce that a tax upon it is a tax upon the article itself, or upon its shipment, then certainly the receipts of a transportation company for transportation are so closely associated with the article itself, or with the transportation thereof, as to constitute a tax upon the article and upon its transportation. For while "the necessities of commerce" or at least the conveniences thereof, do require bills of lading, they very much more require that the transportation company shall derive receipts from the transportation. Without bills of lading, transportation might at some inconvenience, be still conducted, but without receipts, transportation would instantly cease. Receipts, therefore, are at least as necessarily associated with the shipment of articles of commerce as are bills of lading, and a tax upon them is at least equally a tax upon, and regulation of, the transportation itself.

The Gloucester Ferry case, as already shown, is in conflict with the 15th Wallace Gross Receipt case.

In *Walling* vs. *Michigan, 116 United States, 446*, Mr. Justice Bradley, speaking for the court said (p. 455:)

"We have also repeatedly held that, so long as Congress does not pass any law to regulate commerce among the several States, it thereby indicates its will that such commerce shall be free and untrammelled."

That language is in entire harmony with the "broad proposition" laid down in the dissenting opinion of Mr. Justice Miller in the *Gross Receipts Tax Case*, in 15 Wallace.

In *Pickard* vs. *Pullman's Southern Car Company, 117 U. S., 34*, a privilege tax of fifty dollars per annum on Pullman sleeping cars and coaches running into, out of and through the State of Tennessee, was declared to be a restriction upon inter-State commerce, and, therefore, void.

50 (Endorsed:) U. S. circuit court. The Merchants' National Bank, plaintiff, *vs.* The Leather Manufacturers' Bank, defendant. Bill of exceptions. A. P. & W. Man, def't's att'ys, 56 Wall St., N. Y.

(Endorsed:) U. S. circuit court. Filed Ap'l 22, 1884. Timothy Griffith, clerk.

51 United States Circuit Court, Southern District of New York.

THE MERCHANTS' NATIONAL BANK OF THE CITY OF NEW YORK
against
THE LEATHER MANUFACTURER'S NATIONAL BANK.

It is consented that in making up the return to the writ of error herein the clerk may omit from the record the petition, bond, and order of removal from the supreme court of the State of New York.

BURRILL, ZABRISKIE & BURRILL,
Attorneys for Plaintiff.
A. P. & W. MAN, *Attorneys for Defendant.*

(Endorsed:) U. S. circuit court, S. D. of N. Y. The Merchants' National Bank of the City of New York against The Leather Manufacturers' National Bank. Stipulation. Burrill, Zabriskie & Burrill, pl'ff's attorneys, 21 Broad St., N. Y. U. S. circuit court.
52 Filed Oct. 11, 1884. Timothy Griffith, clerk.

53 *Bond for Damages and Costs.*

Circuit Court of the United States of America for the Southern District of New York, in the Second Circuit.

THE MERCHANTS' NATIONAL BANK OF THE CITY OF NEW YORK
vs.
THE LEATHER MANUFACTURERS' NATIONAL BANK.

Know all men by these presents that we, William A. Macy, of the city of New York, and William Rockefeller, of the same city, are held and firmly bound unto the above-named The Merchants' National Bank of the City of New York in the sum of thirty-five thousand dollars, to be paid to the said The Merchants' National Bank of the City of New York; for the payment of which, well and truly to be made, we bind ourselves and each of us, our and each of our heirs, executors, and administrators, jointly and severally, firmly by these presents.

Sealed with our seals and dated the thirteenth day of August, in the year of our Lord one thousand eight hundred and eighty-four.

Whereas the above-named The Leather Manufacturers' National Bank has prosecuted a writ of error to the Supreme Court of the United States to reverse the judgment rendered in the above-entitled suit by the judge of the circuit court of the United States for the southern district of New York on the — day of June, 1884:

Now, therefore, the condition of this obligation is such that if the above-named The Leather Manufacturers' National Bank shall pros

ecute its said writ of error to effect and answer all damages and costs if it shall fail to make its plea good, then this obligation shall be void; otherwise the same shall be and remain in full force and virtue.

(S'g'd) WM. H. MACY. [L. S.]
(S'g'd) WM. ROCKEFELLER. [L. S].

Sealed and delivered and taken and acknowledged this 30th day of August, 1884, before me—

[NOTARIAL SEAL.] JULIUS H. SEYMOUR,
Notary Public (128), *City and County of N. Y.*

54 (Endorsed:) U. S. circuit court. The Merchants' National Bank of the City of New York *vs.* The Leather Manufacturers' National Bank. Bond on writ of error. A. P. & W. Man, proctors. Approved as to form, manner of execution, and sufficiency of sureties September 22nd, 1884. (S'g'd) Wm. J. Wallace. U. S. circuit court. Filed Sep. 22, 1884. Timothy Griffith, clerk.

We approve the within bond as to form, amount, manner of execution, and sufficiency of sureties, and we waive justification.

Dated Sept. 5, 1883.

(S'g'd) BURRILL, ZABRISKIE & BURRILL,
Plaintiff's Attorneys.

UNITED STATES OF AMERICA, *Southern District of New York,* } *ss:*

William H. Macy, being duly affirmed, and William Rockefeller, being duly sworn, each for himself doth depose and say that he is a resident and freeholder within the southern district of New York, and that he is worth the sum of seventy thousand dollars over and above all his just debts and liabilities which he owes or has incurred and exclusive of property exempt by law from levy and sale under an execution.

(S'g'd) WM. H. MACY.
(S'g'd) WM. ROCKEFELLER.

Affirmed and sworn to this 30th day of August, A. D. 1884, before me—

[NOTARIAL SEAL.] JULIUS H. SEYMOUR,
Notary Public (128), *City and County of N. Y.*

55 UNITED STATES OF AMERICA, *ss:*

To the Merchants' National Bank of the City of New York, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States to be holden at Washington on the second Monday of October, eighteen hundred and eighty-four, pursuant to a writ of error filed in the clerk's office of the circuit court of the United States for the southern district of New York, wherein The Leather Manufacturers' National Bank is plaintiff in

In *Wabash, &c., Railway Company* vs. *Illinois, 118 U. S., 557*, this court held that a statute of the State of Illinois, which attempted to regulate charges for transportation was unconstitutional as to goods in course of transportation to points outside of the State, although the regulation was attempted only so far as concerned the transportation within the limits of the State.

If a provision that a railroad company shall not charge a greater sum for any distance than it does for a longer distance (a provision which affects in advance the sum to be charged for transportation) is an interference with commerce, then certainly a provision which affects that sum by requiring a portion of it to be paid into the State treasury, must be considered also such an interference. The reasoning of that case is in conflict with the reasoning of the *Gross Receipts Tax Case* in 15 Wallace.

In *Fargo* vs. *Michigan, 121 U. S., 230*, a Michigan statute under which taxes were sought to be imposed upon the gross receipts of the Merchants' Despatch Transportation Company, a joint stock association of the State of New York, was declared unconstitutional and void in so far as the receipts were derived from the transportation of freight into, out of, or through the State of Michigan. The 15 Wallace case of *State Tax on Railway Gross Receipts* having been relied upon by the Attorney General of Michigan in his argument, it is thus commented upon by Mr. Justice Miller, who delivered the opinion of this Court (page 243):

"The distinction between that case, which is mainly relied upon by the Supreme Court of Michigan in support of its decree, and the one which we now have before us, is very obvious and is two-fold: *First.* The corporation which was the subject of that taxation was a Pennsylvania corporation, having the *situs* of its business within the State which created it and endowed it with its franchises. Upon these franchises, thus conferred by the State, it was asserted the State had a right to levy tax. *Second.* This tax was levied upon money in the treasury of the corporation, upon property within the limits of the State, which had passed beyond the stage of compensation for freight and had become like any other property or money liable to taxation by the

State. The case before us has neither of these qualities. The corporation upon which this tax is levied is not a corporation of the State of Michigan, and has never been organized or acknowledged as a corporation of that State. The money which it received for freight carried within the State probably never was within the State, being paid to the company either at the beginning or the end of its route, and certainly at the time the tax was levied it was neither money nor property of the corporation within the State of Michigan."

But having thus pointed out the distinction, the opinion does not rest upon it alone, but proceeds in the broadest and most emphatic terms, applicable to domestic as well as foreign corporations, and in direct conflict with the reasoning of the 15 Wallace case, as follows:

"The proposition that the States can, by way of a tax upon business transacted within their limits, or upon the franchises of corporations which they have chartered, regulate such business or the affairs of such corporations, has often been set up as a defense to the allegation that the taxation was such an interference with commerce as violated the constitutional provision now under consideration. But where the business so taxed is commerce itself, and is commerce among the States or with foreign nations, the constitutional provision cannot thereby be evaded; nor can the States, by granting franchises to corporations engaged in the business of the transportation of persons or merchandise among them, which is itself inter-State commerce, acquire the right to regulate that commerce, either by taxation or in any other way."

In the course of the opinion, the Gloucester Ferry, Pullman Southern Car Company, and Wabash cases are all cited approvingly. The syllabus of the case reads as follows:

"A State statute which levies a tax upon the gross receipts of railroads for the carriage of freights and passengers into, out of, or through the State, is a tax upon commerce among the States, and therefore void.

"While a State may tax the money actually within the State, after it has passed beyond the stage of compensation for carrying persons or property, as it may tax other money or property within its limits, a tax upon receipts for this class of carriage specifically is a tax upon the commerce out of which it arises, and, if that be inter-State commerce, it is void under the Constitution.

"The States cannot be permitted, under the guise of a tax upon business transacted within their borders, to impose a burden upon commerce among the States, when the business so taxed is itself inter-State commerce."

The same syllabus is printed in the report of the case in 7 Supreme Court Reporter, 857, and is there stated to have been prepared by the Court.

The opinion, be it observed, was written by the same learned Justice who wrote the dissenting opinion in the 15 Wallace case of *State Tax on Railway Gross Receipts*. The language is very little different and is at least equally as strong as the "broad proposition" there laid down. As the decision in the Michigan case is without dissent, it would seem, unmistakably, that what was formerly a dissenting opinion is now the unanimous opinion of this Court.

If the Michigan case left any doubt upon that subject it is certainly removed by the decision in the still later case of *Philadelphia and Southern Mail Steamship Company* vs. *Pennsylvania, 122 U. S., 326*, in which the act of June 7, 1879, the same act under which the taxes now in controversy are claimed, is declared to be void so far as it imposes a tax upon the receipts of that company derived from transportation between different States or to and from foreign countries. Mr. Justice Bradley who delivered the opinion said (pp. 336, 337):

"If, then, the commerce carried on by the plaintiff in error in this case could not be constitutionally taxed by the State, could the fares and freights received for transportation in carrying on that commerce be constitutionally taxed? If the State cannot tax the transportation, may it, nevertheless, tax the fares and freight received therefor? Where is the difference? Looking at the substance of things, and not at mere forms, it is very difficult to see any difference. The one thing seems to be tantamount to the other. It would seem to be rather metaphysics than plain logic for the State officials to say to the company: 'We will not tax you for the transportation you perform, but we will tax you for what you get for performing it.' Such a position can hardly be said to be based on a sound method of reasoning."

Refering to the 15 Wallace case of the *State Freight Tax*, he cites approvingly, and on page 340 says:

"If this case stood alone, we should have no hesitation in saying that it would entirely govern the one before us; for, as before said, a tax upon fares and freights received for transportation is virtually a tax upon the transportation itself."

But the 15 Wallace case of the *State Tax on Railway Gross Receipts* having been relied upon by the Attorney General of Pennsylvania the learned judge finds it necessary to refer to it. He mentions the two grounds on which the opinion in that case was based, and disposes of them as follows (pages 341-342:)

"The grounds on which the opinion was based, in order to distinguish this case from the preceding one, were two: First, that the tax, being collectible only once in six months, was laid upon a fund which had become the property of the company, mingled with its other property, and incorporated into the general mass of its property, possibly expended in improvements, or otherwise invested. The case is likened, in the opinion, to that of taxing goods which have been imported, after their original packages have been broken, and after they have been mixed with the mass of property in the country, which, it was said, are conceded in *Brown* v. *Maryland* to be taxable. * * * * A review of the question convinces us that the first ground on which the decision in *State Tax on Railway Gross Receipts* was placed is not tenable; that it is not supported by anything decided in *Brown* v. *Maryland;* but, on the contrary, that the reasoning in that case is decidedly against it. The second ground on which the decision referred to was based was, that the tax was upon the franchise of the corporation granted to it by the State. We do not think that this can be affirmed in the present case. It certainly could not have been intended as a tax on the corporate franchise, because, by the terms of the act, it was laid equally on the corporations of other States doing business in Pennsylvania. If intended as a tax on the franchise of doing business,—which in this case is the business of transportation in carrying on inter-State and foreign commerce,—it would clearly be unconstitutional. * * * * * * The tax in the present case is laid upon the gross receipts for transportation as such. Those receipts are followed and caused to be accounted for by the company, dollar for dollar. It is those specific receipts, or

the amount thereof, (which is the same thing,) for which the company is called upon to pay the tax. They are taxed not only because they are money, or its value, but because they were received for transportation."

The act of 1879, it will be observed, taxes only receipts "for tolls and transportation, telegraph business, or express business," whereas the act of 1866 taxed all receipts without regard to the sources from whence derived.

But although this distinction between the two acts was considered worthy of notice, the decision in the steamship case was not allowed to rest upon it. That decision was evidently intended to be, and must be considered as, a complete reversal of the 15 Wallace case.

In the opinion it is further stated (pp. 345, 346):

"We may add, however, that since the decision of the *Railway Tax Cases*, now reviewed, a series of cases has received the consideration of this Court, the decisions in which are in general harmony with the views here expressed, and show the extent and limitations of the rule that a State cannot regulate or tax the operations or objects of inter-State or foreign commerce. We may refer to the following: *Railroad Co.* v. *Husen, 95 U. S., 465; Cook* v. *Pennsylvania, 97 U. S., 566; Guy* v *Baltimore, 100 U. S., 434; Webber* v. *Virginia, 103 U. S., 344; Moran* v. *New Orleans, 112 U. S., 69; Walling* v. *Michigan, 116 U. S., 446; Pickard* v. *Pullman Co., 117 U. S., 34; Wabash & St. Louis Railroad* v. *Illinois, 118 U. S., 557; Robbins* v. *Shelby County, 120 U. S., 489; Fargo* v. *Michigan, 121 U. S., 230.* The cases of *Moran* v. *New Orleans* and *Fargo* v. *Michigan*, are especially opposite to the case now under consideration. As showing the power of States over local matters incidentally affecting commerce, see *Munn* v. *Illinois, 94 U. S., 113, 123*, and other cases in the same volume, viz: *Chicago & Burlington Railroad* v. *Iowa, pp. 155, 161; Peik* v. *Chicago & Northwestern Railway, pp. 164, 176; Winono and St. Peter Railroad* v. *Blake, p. 180*, as explained by *Wabash Co.* v. *Illinois; The Wharfage cases*, viz: *Packet Co.* v. *Keokuk, 95 U. S., 80; Packet Co.* v. *St. Louis, 100 U. S., 423, 428; Packet Co.* v. *Catlettsburg, 105 U. S., 559, 563; Transportation Co.* v. *Parkersburg, 107 U. S., 691, 698; Ouachita Packet Co.* v. *Aiken, 121 U. S., 444; Mobile* v. *Kimball, 102 U. S., 691; Brown* v. *Houston, 114 U. S., 622, 630; Railroad Commission Cases, 116 U. S., 307; Coe* v. *Errot, 116 U. S., 517.*"

The decision in the Steamship case is by a unanimous Court, and the learned Justice who, in delivering the opinion, declares the reasoning of the 15 Wallace case to be untenable, was one of the majority of the Court when that case was decided.

The receipts sought to be taxed in the Steamship case were derived from transportation mainly upon the high seas. In the argument of the learned counsel for the company, some distinction was endeavored to be made between such transportation and transportation by railway upon land, but no such distinction is made, recognized, or referred to in the opinion of this court, and, in point of fact, no such distinction exists. Says Mr. Justice Strong, in the case of the *State Freight Tax, 15 Wallace, 232, 275:*

"Nor does it make any difference whether this interchange of commodities is by land or by water. In either case the bringing of the goods from the seller to the buyer is commerce. Among the States it must have been principally by land when the Constitution was adopted."

The decision of the Court in the Steamship case, therefore, to the effect that receipts from inter-State or international transportation are not taxable, is equally applicable to the receipts of railroad companies, and what is applicable to railroad companies is equally so to telegraph companies.

As in the *Case of the State Freight Tax,* (*15 Wall. 232,*) this Court declared that a law of Pennsylvania requiring transportation companies to pay a fixed sum as a tax on each ton of freight carried was unconstitutional, so far as it related to freight carried from one State into another, so, in *Telegraph Company* vs. *Texas, 105 U. S., 460,* it was held that a law of the State of Texas requiring telegraph companies to pay as a tax a fixed sum for each message sent, was unconstitutional so far as it applied to inter-State messages.

Said Mr. Chief Justice Waite, who delivered the opinion of the Court (p. 464):

"A telegraph company occupies the same relation to com-

merce as a carrier of messages that a railroad company does as a carrier of goods. Both companies are instruments of commerce, and their business is commerce itself. They do their transportation in different ways, and their liabilities are in some respects different, but they are both indispensable to those engaged to any considerable extent in commercial pursuits."

Said Mr. Justice Bradley in *Leloup* vs. *Port of Mobile, 127, U. S. 640, 645:*

"We have decided that communication by telegraph is commerce, as well as in the nature of postal service, and if carried on between different States, it is commerce among the several States, and directly within the power of regulation conferred upon Congress, and free from the control of State regulations, except such as are strictly of a police character."

The last cited case declares unconstitutional a license tax upon the business of the Western Union Telegraph Company, the present Plaintiff in Error. The opinion of the learned Justice, after referring to the great number of recent cases involving the commercial power of Congress, requiring, during the past fifteen years, a re-examination of the whole subject by this Court, and a modification of certain data and decisions heretofore made, so as to conform to the fundamental principles enunciated by Chief Justice Marshall and other members of the court in former times, contains this strong language:

"This is always done, however, with great caution, and an anxious desire to place the final conclusion reached upon the fairest and most just construction of the constitution in all its parts. In our opinion such a construction of the constitution leads to the conclusion that no State has the right to lay a tax on inter-State commerce in any form, whether by way of duties laid on the transportation of the subjects of that commerce, or on the receipts derived from that transportation, or on the occupation or business of carrying it on, and the reason is that such taxation is a burden on that commerce, and amounts to a regulation of it, which belongs solely to Congress."

In *Ratterman* vs. *Western Union Telegraph Co., 127, U. S. 411,* this Court decided that no State can tax the receipts of this company for inter-State messages.

The Pennsylvania Courts decided the case now under dis-

cussion upon the authority of the decision of this Court in the Gross Receipts case arising under the Pennsylvania act of 1866. Judge Simonton, the learned President of the Dauphin County Court, in his opinion, which is adopted by the Supreme Court of Pennsylvania, says:

"The Supreme Court of the United States has decided, in *Reading Railroad Company* vs. *Pennsylvania, 15 Wall., 284*, that a tax on Gross Receipts accruing from the transportation of freight between the States is not a regulation of commerce. This was followed in *Philadelphia & Southern Mail Steamship Company* vs. *Commonwealth, 104 Pennsylvania State, 109*. We are unable to distinguish this case from those, and we are bound by them until, if ever, they are overruled or reversed."

It has been pointed out that there are two points of difference between this case and the 15th Wallace case.

First, the Western Union Telegraph Company is a foreign corporation, whereas the Reading Railroad Company was a domestic corporation, which difference alone was considered, in *Fargo* vs. *Michigan*, of sufficient importance to warrant a different decision.

Second, the act of 1866 applied to all the receipts of the companies named in the act, whereas the act of 1879 expressly limits the tax to receipts "from tolls and transportation, *telegraph business* or express business," which difference is, of itself, considered by this Court, in the Steamship case, to be of controlling importance.

But in addition to these differences, it has been shown that since this case was heard in the Pennsylvania courts, the 15th Wallace case has been substantially reversed by the later decisions of this court, and the decision of the Supreme Court of Pennsylvania, in the *Philadelphia & Southern Mail Steamship Company's case* is directly reversed by the decision of this Court in *Philadelphia and Southern Mail Steamship Company* vs. *Pennsylvania, 122 U. S., 326*, in which last mentioned case, the act of June 7, 1879, the same act under which the taxes now in controversy are claimed, is declared, by this Court, to be void.

In a late case between the parties hereto, Judge Simonton, in an opinion filed April 28, 1888, holding the authorities upon which his opinion, in this present case is based, to have been overruled by this Court, denied the right of the State to recover a tax upon receipts from inter-State messages and directed judgment in favor of the company.

It is respectfully submitted that the judgment of the Supreme Court of Pennsylvania, in this case, must be reversed.

M. E. OLMSTED,
BROWN & WELLS,
Attorneys for Western Union Telegraph Company,
Plaintiff in Error.

In the Supreme Court of the United States.

OCTOBER TERM, 1888.

No. 56.

Western Union Telegraph Company,

Plaintiff in Error,

vs.

The Commonwealth of Pennsylvania,

Defendant in Error.

ERROR TO SUPREME COURT OF PENNSYLVANIA.

DEFENDANT'S BRIEF.

JOHN F. SANDERSON,
Deputy Attorney General.

W. S. KIRKPATRICK,
Attorney General.

In the Supreme Court of the United States.

OCTOBER TERM, 1888. No. 56.

ERROR TO SUPREME COURT OF PENNSYLVANIA.

WESTERN UNION TELEGRAPH COMPANY,
Plaintiff in Error,

vs.

COMMONWEALTH OF PENNSYLVANIA,
Defendant in Error.

TAX ON GROSS RECEIPTS.

By reference to page 14 of the transcript of record, it will appear that the defendant was held liable in the lower court, whose judgment was affirmed by the Supreme Court of Pennsylvania, for taxes on messages sent from point to point within the State; on messages sent from points within the State to points in other States; on messages sent from points in other States to points within this State; and on messages sent from points in other States to points in other States, which passed over lines partly within this State, and the amounts of tax upon the several classes of messages are stated at the top of page 15 of the transcript, as follows: